



## **HHS CIRCULAR C-038**

### **Guidelines for the Acceptance of Electronically Transmitted and Electronically Signed Contract Records**

#### **Purpose**

The purpose of this policy is to provide guidance to Texas Health and Human Services (HHS) agencies on the acceptance of electronically-signed contract records transmitted by fax, email, or scanned records that are attached and emailed. Additionally, this policy provides guidance on the use and acceptance of electronic signature processes for contract procurement, execution, and management within HHS agencies, as determined by each agency's leadership.

#### **Policy Statement**

It is the policy of the Health and Human Services Commission that HHS agencies may accept electronically signed records, including records transmitted electronically by fax or email, and scanned documents that are attached to emails, as valid signatures for contracts. The Electronic Signatures Risk Matrix (attached to this circular), or an equivalent, must be used to determine whether electronically-signed contract records may be accepted.

Other approved electronic signature processes may be used, with the approval of the respective agency's commissioner or designee and notification to the Contract Council, for contract procurement, execution, and management.

Interagency contracts between HHS agencies are regarded as low risk, and electronically signed records may be accepted without the need for further risk analysis.

#### **Background**

In 1997 and 1999, the Texas Legislature enacted several laws to facilitate and promote electronic commerce and to make government more accessible to Texans. Digital signatures that comply with Department of Information Resources (DIR) rules will be considered to have the same legal effect as a handwritten signature. As a result, many transactions that previously required paper documents may now be completed electronically.<sup>1</sup>

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<sup>1</sup> Department of Information Resources, SRRPUB13 – Digital Signatures & Public Key Infrastructure (PKI) Guidelines, Revised February 28, 2005 Version 3.1.



In May 2003, DIR adopted the “Guidelines for the Management of Electronic Transactions and Signed Records” as rule (1 TAC 203), which details requirements for state agencies that send and accept electronic records and electronic signatures or otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.<sup>2</sup> This policy was developed in accordance with these guidelines and in response to the requests by HHS stakeholders and contractors to improve the overall efficiency of HHS business operations.

## **Scope**

This policy applies to all HHS agencies.

## **Agency Responsibilities**

Each HHS agency must develop internal procedures for implementation of these guidelines. These procedures should include factors such as internal controls, records retention, and a process for identifying risk.

## **Agency Procedures**

Agency procedures should include:

- Requirements for when a paper copy, true-ink signature is required.
- Internal controls that provide confidentiality and security safeguards for all electronic contract records. If any such electronic records contain sensitive personal information or protected health information, specific procedures must be developed to ensure confidentiality is maintained. These procedures may require establishing and maintaining controlled environments for the transmission of such records.
- Record retention requirements that comply with the standards for electronic recordkeeping and scanned/faxed digital images as specified by the Texas Library and Archives Commission. <https://www.tsl.state.tx.us/slr/recordspubs/state.html#statebulletins>.
- Risk-based process using the guidance in the Electronic Signatures Risk Matrix.

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<sup>2</sup> Department of Information Resources, SRRPUB13 – Digital Signatures & Public Key Infrastructure (PKI) Guidelines, Revised February 28, 2005, Version 3.1.



## Definitions

**Agency** - One of the five HHS agencies.

**Control** - A safeguard or protective action, device, policy, procedure, technique, or other measure prescribed to meet security requirements (i.e., confidentiality, integrity, and availability) that may be specified for a set of information resources. Safeguards may include security features, management constraints, personnel security, and physical security of structures, areas, and devices.

**Digital signature** - An electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature, and that complies with the requirements of Title 1 TAC Chapter 203.

**Electronic record** - A record created, generated, sent, communicated, received, or stored by electronic means.

**Electronic signature** - An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**HHS agencies** – The Health and Human Services Commission, the Department of Aging and Disability Services, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the Department of State Health Services.

**Protected health information (PHI)** - Information the privacy rule protects, including individually identifiable health information transmitted by electronic media or maintained in any medium and excludes education records and employment records.

**Sensitive personal information (SPI)** - An individual's first name and last name or first initial and last name, in combination with any or one of the following items, if the names and items are not encrypted: (a) social security number; (b) driver's license or government-issued identification number; or (c) account number, or credit or debit card number in combination with any required security code, access code or password that would permit access to an individual's financial account.



## **References**

American Health Information Management Association- Electronic Signature, Attestation, and Authorship.

Family Educational Rights and Privacy Act.

Texas Administrative Code (TAC), Chapter §203: Management of Electronic Transactions and Signed Records.

Texas Administrative Code (TAC), Chapter § 202: Information Security Standards.

Texas Department of Information Resources SRRPUB13 – Digital Signatures & Public Key Infrastructure (PKI) Guidelines.

Title 45, Code of Federal Regulations, Parts 160-164.

## **Inquires**

If you have questions about the content of this policy, contact your agency's Contract Oversight and Support (COS) director.