

VIA FEDEX AND EMAIL

December 8, 2024

The Honorable Xavier Becerra
Secretary
c/o Sean McCluskie
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201
sean.mccluskie@hhs.gov

Re: Preservation Notice for All Information and Records

Dear Mr. Becerra:

This letter serves as an official demand to the Department of Health and Human Services (“HHS”), including each of its operating divisions and secretariat offices and any other divisions therein, and every employee and contractor and all other personnel within, to preserve all documents, records, tangible things (including notes), and electronically stored information (“ESI”) and to not destroy or delete any records currently in its possession, custody, or control.

You must act immediately to preserve all documents, records, tangible things, and ESI. Adequate preservation of ESI requires more than simply refraining from efforts to delete, destroy, or dispose of such records. You must intervene to prevent loss due to routine operations or active deletion by employing proper techniques and protocols to preserve ESI. *Many routine activities serve to irretrievably alter evidence and constitute unlawful spoliation of records.*

Nothing in this demand for preservation should be read to limit or diminish your concurrent common law, statutory obligations, regulations, and/or policies to preserve documents, tangible things, and other records.

You are further directed to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of ESI. Examples of such features and operations may include:

- Purging the contents of e-mail and messaging repositories by age, quota, or other criteria
- Using data or media wiping, disposal, erasure or encryption utilities or devices
- Overwriting, erasing, destroying, or discarding backup media
- Re-assigning, re-imaging, or disposing of systems, servers, devices, or media
- Running “cleaner” or other programs effecting wholesale metadata alteration
- Releasing or purging online storage repositories or non-renewal of online accounts

- Using metadata stripper utilities
- Disabling server, packet, or local instant messaging logging
- Executing drive or file defragmentation, encryption, or compression programs

You should anticipate the potential that your employees, personnel, contractors, or others may seek to hide, destroy, or alter ESI. You must act to prevent and guard against such actions. Especially where agency machines were used for Internet access or personal communications, you should anticipate that users may seek to delete or destroy information they regard as personal, confidential, incriminating, or embarrassing, and in so doing, they may also delete or destroy records.

You are directed to preserve complete backup media sets (including differentials and incremental backups) that may contain unique communications and ESI. You should also take affirmative steps to prevent anyone with access to your data, systems, accounts, and archives from seeking to modify, destroy or hide ESI wherever it resides (such as by deleting or overwriting files, using data shredding and erasure applications, re-imaging, damaging, or replacing media, encryption, compression, steganography or the like).

Please forward this notice to all employees, personnel, and contractors in HHS, including everyone in each operating division and secretariat office, including all personnel and contractors in or relating to Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), National Institutes of Health (NIH), Centers for Medicare and Medicaid Services (CMS), and Health Resources and Services Administration (HRSA), Advanced Research Projects Agency for Health (ARPA-H), and Administration for Strategic Preparedness & Response (ASPR) who will be able to ensure all records are properly preserved. Note that we will contact the Department of Justice and the Inspector General if there is any evidence that any records are destroyed, deleted, modified in any manner before January 21, 2025.

Regards,



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