

## Report on Patient Privacy Volume 19, Number 7. July 10, 2019 Judge in Ciox Health Case Tells HHS 'Let Me Rule'; Sets New Deadlines

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By Theresa Defino

Barring any delays, by the end of this month a district court judge should be able to consider how to rule on whether the nation's largest medical records retrieval firm can at least challenge the fees set by the HHS Office for Civil Rights (OCR) that apply when individuals seek protected health information (PHI) from providers.

On June 28, Ciox Health LLC met the deadline set by Judge Amit P. Mehta with the First District Court for the District of Columbia for it to "supplement the factual record to support its theory of standing" and/or submit a "memorandum of no more than ten double-spaced pages that explains how any new evidence affects the standing calculus."

The case is being watched by patient advocates and other medical records firms, especially those like ChartSquad LLC that fulfill requests on behalf of patients and have themselves been urging OCR to take action against fee violators ("Suit Raises Hopes OCR's 'Hot Mess' of Access Enforcement Will Be Fixed," *RPP* 18, no. 2).

Ciox, a business associate (BA) under HIPAA, filed suit in January 2018 ("Medical Records Firm Sues HHS Over Access Fees, Seeks Return to System Under State Laws," *RPP* 18, no. 2). In sum, the firm contends OCR's allowable fees are "irrational, arbitrary, capricious, and absurd" and questions the applicability of a fee of \$6.50 per request as applied regardless of where the records are headed. Ciox argues it should be allowed to charge more for third-party requests and that OCR is violating the spirit and the letter of the HITECH Act. Ciox said it is following OCR's 2016 guidance on fees, which it refers to as "mandates."

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