



**MICHAEL N. FEUER**  
CITY ATTORNEY

REPORT NO. R 18 - 0134  
MAY 11 2018

**REPORT RE:**

**SECOND MODIFICATION OF THE DESIGNATION OF HEALTH CARE  
COMPONENTS OF THE CITY OF LOS ANGELES, A HYBRID ENTITY,  
PURSUANT TO THE HEALTH INSURANCE PORTABILITY AND  
ACCOUNTABILITY ACT OF 1996**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Honorable Members:

This Report discusses and recommends, pursuant to authority reserved by and to the City Council, that the City Council designate the Office of the Mayor within the City as a "Health Care Component" under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

On July 30, 2010, the City Council adopted a Resolution relative to the designation of the City of Los Angeles (City) as a "hybrid" entity pursuant to HIPAA. The Resolution also called for the designation of the following portions of the City of Los Angeles as "health care components" pursuant to HIPAA:

- 1) The Los Angeles Fire Department (LAFD);
- 2) The Billing Section of the LAFD;
- 3) Correctional Care Services of the Medical Services Division of the Personnel Department;
- 4) Information Technology Agency;
- 5) Records Management Division of the Office of the City Clerk; and

- 6) Medical Services Office of the Employment Services Division of the Department of Water and Power.

Again, on September 11, 2013, your Honorable Body adopted another Resolution relative to modifying the existing designation of “health care components” of the City and approved the proposed HIPAA Policies for the City, a “hybrid” covered entity, pursuant to HIPAA as follows:

- 1) The LAFD;
- 2) Correctional Care Services of the Medical Services Division of the Personnel Department;
- 3) Information Technology Agency;
- 4) Records Management Division of the Office of the City Clerk;
- 5) Medical Services Office of the Employment Services Division of the Department of Water and Power; and
- 6) Financial Operations and Auditing Divisions of the Controller’s Office.

In both those Resolutions, the City Council reserved the right to amend the above-referenced designations to add, make exceptions to, modify or eliminate those HIPAA designations. Pursuant to that reservation of authority, the Mayor’s Office has requested, and we concur, that the City Council add the Office of the Mayor as a designated “Health Care Component” of the City pursuant to HIPAA.

#### Background

In 1996 Congress passed HIPAA, which established a set of national standards for the protection of certain health information. Additionally, the American Recovery and Reinvestment Act of 2009 amended HIPAA to add the Health Information Technology for Economic and Clinical Health (HITECH) Act, which strengthened the notification requirements and increased the penalties for violations. Finally, on January 25, 2013, the HIPAA Privacy, Security, Enforcement and Breach Notification Rules under HITECH were modified in a final rule. The U.S. Department of Health and Human Services (HHS), through its Office for Civil Rights (OCR), has authority to enforce the provisions of HIPAA and to establish standards to address the use and disclosure of individuals’ health information, called “protected health information” (PHI) by organizations that are “covered entities.” The provisions address individuals’ rights of privacy and rights to understand and control how their health information is used. A major goal of HIPAA is to assure that individuals’ health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care.

The privacy rules generally allow the use and disclosure of health information without authorization from an individual for purposes of health care treatment, payment activities and health care operations. The allowed uses and disclosures must be limited

to the “minimum necessary” needed to accomplish the intended purpose of the use and disclosure. Other than the approved uses and disclosures, individual health information must be secured and protected whether it is received orally, in writing or electronically.

For purposes of HIPAA the following definitions apply:

“Health care treatment” means the provision, coordination or management of health care and related services among health care providers or by a health care provider with a third party, consultation between health care providers regarding a patient or the referral of a patient from one health care provider to another.

“Payment” encompasses the various activities of health care providers to obtain premiums, to fulfill their coverage responsibilities and provide benefits under the plan, and to obtain or provide reimbursement for the provision of health care.

“Health care operations” are certain administrative, financial, legal and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment. These operations include research, studies, evaluations, and analysis of data (including PHI), such as the activities performed by the Mayor’s Office in its Charter-mandated role as manager of all City departments, including the City’s Fire Department.

The City provides medical treatment through a number of its departments, such as the Fire Department. Additionally, the City engages in a number of transactions that transmit health care information for medical treatment and related services and that transmit health care information between parties to carry out financial or administrative activities related to health care. Financial or administrative activities related to health care include the following types of information transmission:

- 1) Health care claims or equivalent encounter information;
- 2) Health care payment and remittance advice;
- 3) Coordination of benefits;
- 4) Health care claim status;
- 5) Enrollment and disenrollment in a health plan;
- 6) Eligibility for a health plan;
- 7) Health plan premium payments;
- 8) Referral certification and authorization;
- 9) First report of injury;
- 10) Health claims attachments; and
- 11) Other transactions that the Secretary of HHS may prescribe by regulation.

Any time the City, through its workforce, creates, receives, maintains or transmits health information in connection with providing treatment or financial or administrative

activities related to health care, it must ensure the confidentiality, integrity and availability of the information. Additionally, when any of the activities or functions described above is performed by a business associate, the business associate must comply with the provisions of HIPAA.

As part of the periodic survey of functions within the City, we concur with the request from the Mayor's Office to be designated as a "Health Care Component" of the City to enable the Mayor's Office to use citywide data, in a data-driven process, to improve the efficacy and impact of services provided city-wide and evaluate the operational performance of, among other departments of the City, the Fire Department.

Any time the City, through its workforce, creates, receives, maintains or transmits health information in connection with providing treatment or financial or administrative activities related to health care, it must ensure the confidentiality, integrity and availability of the information. Additionally, when any of the activities or functions described above is performed by a business associate, the business associate must comply with the provisions of HIPAA.

#### Discussion and Analysis

1. Designation of the Mayor's Office as a "health care component" is appropriate. The City engages in "covered" and "non-covered" functions. For example, the Fire Department provides medical treatment as part of its EMS function. Therefore, the Fire Department is covered under HIPAA. Pursuant to Los Angeles Charter Section 231, the Mayor has management authority over most of the departments, agencies and appointed offices of the City, including the Fire Department. Specifically, under the Los Angeles City Charter, the Mayor is the Chief Executive Officer of the City, empowered to exercise management authority over all departments, including the Fire Department. Charter Section 230, 231. Under the City Charter, the Mayor is responsible for appointing the Fire Chief (subject to City Council confirmation) and may remove the Fire Chief (without City Council confirmation). Charter Sections 231(c)-(e), 508(b)-(e), and 522. Additionally, the City Charter provides that the Mayor is responsible for appointing the members of the Board of Fire Commissioners (subject to City Council confirmation) and may remove the members of the Board of Fire Commissioners (without City Council confirmation). Charter Sections 231(d), 502(a)-(d). The Mayor's Office is also charged under the Charter with preparing and submitting a proposed annual budget for the City, including the Fire Department. Charter Section 231(g). The Charter designates the Mayor as the City official charged with declaring a local emergency and coordinating and supervising the City's emergency preparedness and response activities. Charter Section 231(i). Lastly, the Charter empowers the Mayor to establish procedures and implement policies to supervise and manage City departments, including the Fire Department. Charter Section 231(j). The Mayor's Office would like to review statistical data to improve the efficacy and impact of services provided city-wide and evaluate the

operational performance of, among other departments of the City of Los Angeles, the Fire Department. Therefore, the Mayor's Office is appropriately covered under HIPAA.

Section 164.105(a)(2)(iii)(C) provides, in part, that a covered entity is responsible for designating the components that are part of one or more health care components of the covered entity and documenting the designation.

2. Every part of a Hybrid Entity that has been designated as a Health Care Component has responsibility for compliance with HIPAA's security and privacy requirements. A disclosure of protected health information by a Health Care Component to any part of the Hybrid Entity that has not been similarly designated as a Health Care Component is the same as a disclosure outside the covered entity.<sup>1</sup> If an unauthorized disclosure is made, the City would be required to comply with the breach notification procedures under HIPAA, including notification to HHS of the violation. A breach can subject the City to penalties.

HIPAA requires covered entities to implement administrative, organizational, technological and physical safeguards to ensure compliance and to prevent unauthorized use or disclosure of PHI. HIPAA policies and procedures must be in writing. Further, the covered entity must conduct periodic assessments of its policies and procedures and update them as required by HHS.

Additionally, HITECH amended the enforcement provisions of HIPAA. HITECH added criminal penalties to the enforcement arsenal of HHS. HITECH also increased the Civil Monetary Penalties (CMP). The minimum CMP is \$100 for each violation found. The maximum CMP per year is \$1,500,000. The amount of CMP imposed by HHS depends on the level of knowledge, the number of similar violations and whether or not the violations were corrected.

Given the criminal and civil penalties that can be imposed, it is incumbent that the City take steps to limit its liability. By designating the City as a hybrid entity whose business includes covered and non-covered functions, only the component parts and business associates would have responsibility for compliance with security and privacy requirements, including notification of individuals and HHS when there is a breach. Instead of HHS looking at the entire City for failing to comply with HIPAA, it would look only at the health component parts of the City and the City's business associates to determine compliance.

### Recommendation

Therefore, it is recommended that the City Council adopt the attached Resolution designating the Mayor's Office of the City of Los Angeles, a "hybrid" covered entity, as a

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<sup>1</sup> Id. At 53205

“health care component” pursuant to the Health Insurance Portability and Accountability Act of 1996.

If you have any questions regarding this matter, please contact Senior Assistant City Attorney Valerie Flores or Deputy City Attorney Judith Thompson at (213) 978-8130. They will be present when you consider this matter to answer questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney



By

DAVID MICHAELSON  
Chief Assistant City Attorney

DM:JT:ac  
Attachment