



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 18 - 0 3 3 4

REPORT RE:

NOV 0 8 2018

**THIRD 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, CA 90012

Honorable Members:

The Department of Water and Power (DWP) and the City Attorney recommend that the City Council adopt the attached resolution to de-designate the former Medical Services Office of the Employment Services Division of the DWP as a “health care component” under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Medical Services Office of the Employment Services Division, now known as Occupational Health Services (OHS) of the Human Resources Division of the DWP, no longer performs any health care function except those functions exempted from HIPAA. Functions exempt from HIPAA include certain worker’s compensation-related activities and employer-related occupational health services, i.e., work related injury/illness treatment, post offer evaluations and Occupational Safety and Health Administration medical surveillance exams.

On July 30, 2010, and again on September 11, 2013, the City Council adopted Resolutions relative to the designation of the City of Los Angeles as a “hybrid” entity pursuant to HIPAA and called for the designation of multiple, specific parts of the City as “health care components” pursuant to HIPAA, including the OHS Office of the Human

Resources Division of DWP. The latter Resolution called for the adoption of the City's HIPAA Policies.

In both 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 DWP has requested, and we concur, that the City Council remove or de-designate DWP as a "health care component" of the City of Los Angeles.

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, has authority to enforce the provisions of HIPAA and to establish standards to address the use and disclosure of an individual's health information, called "protected health information" (PHI) by an organization that is a "covered entity." The provisions address an individual's right of privacy and right to understand and control how his or her health information is used. A major goal of HIPAA is to assure that an individual's health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care. 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.

Under HIPAA, "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. Previously, the OHS Office of the Human Resources Division of DWP performed a "health care treatment" function and, as such, was designated as a "health care component" as part of the City, a "hybrid" entity under HIPAA. After the periodic survey of the City's "health care components" was conducted, it was determined that DWP no longer performs a "health care treatment" function. As such, it should be de-designated as a "health care component" and declared as no longer covered by HIPAA.

Recommendation

The DWP recommends, and this Office concurs, that the City Council adopt the attached Resolution to de-designate the former Medical Services Office of the Employment Services Division of the DWP, now known as OHS Office of the Human Services Division of DWP as a "health care component" of the "hybrid" "covered entity" City of Los Angeles pursuant to HIPAA.

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.

Sincerely,

MICHAEL N. FEUER, City Attorney



By

DAVID MICHAELSON
Chief Assistant City Attorney

DM:JDT:fc
Attachment

RESOLUTION

WHEREAS, the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and various implementing regulations impose certain requirements regarding the confidentiality of health information;

WHEREAS, a HIPAA designation is required under 45 CFR Sections 164.105, 164.316(a) and 164.530(i);

WHEREAS, the City of Los Angeles has been designated as a “hybrid” “covered entity” under HIPAA and the federal regulations;

WHEREAS, the City of Los Angeles has previously designated its components that perform HIPAA-covered functions;

WHEREAS, the City of Los Angeles reserved the right to modify those designations as needed to comply with the requirements of the HIPAA regulations or to de-designate previously designated portions of the City that no longer engage in any health care function;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Los Angeles hereby de-designates the former Medical Services Office of the Employment Services Division of the Department of Water and Power, now known as Occupational Health Services of the Human Resources Division of the DWP as a “health care component” of the City of Los Angeles under HIPAA in accordance with 45 C.F.R. 164.105(a)(2)(iii)(D); and the following “health care components” are hereby designated and modified as “health care components” of the “hybrid” entity, City of Los Angeles:

- a) The Mayor's Office;
- b) The Los Angeles Fire Department;
- c) Correctional Care Services Section of the Medical Services Division of the Personnel Department;
- d) Information Technology Agency;
- e) Financial Operations and Auditing Divisions of the Controller's Office;
- f) Records Management Division of the Office of the City Clerk; and

BE IT FURTHER RESOLVED, that the Council of the City of Los Angeles reserves the right to amend the above stated designation and/or HIPAA Policy to include additional components and to make exceptions to, modify, add to or eliminate designations or policy(ies) as required under the HIPAA regulations.