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CITY ATTORNEY

REPORT NO. R 1 3 - 0 2 4 0

AUG 1 6 2013

REPORT RE:

**ADOPTION OF HIPAA POLICY FOR THE CITY OF LOS ANGELES AND
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 Personnel Committee
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Honorable Members:

On July 30, 2010, your Honorable Body adopted a Resolution relative to the designation of the City of Los Angeles as a "hybrid" entity pursuant to the Health Insurance Portability and Accountability Act of 1996 ["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.

Finally, in that Resolution, the City Council reserved the right to amend the above-referenced designations to add, make exceptions to, modify or eliminate those HIPAA designations. It is pursuant to that reservation of authority that an addition to and modification of the designated "health care components" of the City of Los Angeles is being recommended to add the Financial Operations and Audit Divisions of the Controller's Office and remove the designation for the Billing Section of the LAFD.

Further, it is recommended that the Los Angeles City Council adopt the enclosed HIPAA Policy Manual as the official HIPAA Policy for the City of Los Angeles, which incorporates the modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act. [45 CFR Parts 160 and 164].

BACKGROUND

In 1996 Congress passed the Health Insurance Portability and Accountability Act (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 audits, such as those conducted in the Controller’s Office.

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.

Additionally, “health plan premium payment transactions” are covered by the HIPAA regulations [45 CFR Section 162.170] and includes the following transmissions:

- (a) Payment.
- (b) Information about the transfer of funds.
- (c) Detailed remittance information about individuals for whom premiums are being paid.
- (d) Payment processing information to transmit health care premium payments including any of the following:
 - (1) Payroll deductions.
 - (2) Other group premium payments.
 - (3) Associated group premium payment information.

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. The City of Los Angeles (City) engages in “covered” and “non-covered” functions. For example, the Controller’s office audits City contracts, including HIPAA Business Associate Agreements that necessitate review of and exposure to protected health information (PHI). Further, the Controller’s Office needs access to PHI in its payroll function in processing payroll deductions for premium payments. Therefore, the Controller’s Office is 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. Designation of a covered entity as a hybrid is a choice. There is no requirement to become hybrid. As a hybrid entity the component parts and/or business associates would have responsibility for compliance with security and privacy requirements, including notification of individuals and HHS when there is a breach. If the covered entity does not designate itself a hybrid entity, then the covered entity, i.e., the City, would be subject to the HIPAA Privacy Rule.¹ A disclosure of protected health information by the health care component to other departments or divisions that are not part of the health care component is the same as a disclosure outside the covered entity.² If unauthorized disclosures are made, then the City would be required to comply with the breach notifications, would be required to notify the HHS of any violations, and could be subject to penalties.
3. A hybrid designation would limit the applicability of HIPAA to the health care components only.
4. Where a covered entity has electronic protected health information that is secured according to HHS standards, then the breach notification requirements for unauthorized access and disclosure of unsecured protected health information do not apply.

¹ 67 Federal Register at 53204

² Id. At 53205

5. The Labor Relations Division of the City Attorney's Office is conducting an analysis of City Departments to assess which of them are performing health care related functions under HIPAA. The Fire Department, Correctional Care Division of the Medical Services Division of Personnel, and Personnel Department are component parts within the provisions of HIPAA. As our review continued it was determined that the Financial Operations and Audit Divisions of the Controller's Office are subject to HIPAA.

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 \$100.00 for each violation found. The maximum CMP per year is \$1,500,000.00. 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.

Finally, the HIPAA regulations, as codified in 45 C.F.R. Section 164.105(a)(2)(iii)(B), require covered entities to implement policies and procedures to ensure compliance with the safeguard requirements in 164.105(a)(2)(ii). A proposed HIPAA Policy Notebook for the City of Los Angeles comprised of these policies accompanies this report.

RECOMMENDATION

Therefore, it is recommended that the City Council adopt the attached resolution designating the Financial Operations and Audit Divisions of the Controller's Office of the City of the Los Angeles as a "health care component" pursuant to the Health Insurance Portability and Accountability Act of 1996.

Further, it is recommended that the City Council adopt the enclosed HIPAA Policies Notebook as the official HIPAA Policy for the City of Los Angeles.

If you have any questions regarding this matter, please contact Deputy City Attorney Judith Thompson at 978-7155. She will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

PEDRO B. ECHEVERRIA
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PBE/JDT:lh

R E S O L U T I O N

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

WHEREAS, the City of Los Angeles has already been designated as a "covered entity" under the Health Insurance Portability and Accountability Act (HIPAA) and the federal regulations; and

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

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

WHEREAS, the City of Los Angeles reserved the right to modify those designations as needed to comply with the requirements of the HIPAA regulations;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Los Angeles hereby designates the Controller's Office as a "health care component" for purposes of the Federal Health Insurance Portability and Accountability Act (HIPAA) and various implementing regulations; and in accordance with 45 C.F.R. 164.105(a)(2)(iii)(D), the following health care components are hereby designated and modified as "health care components" of the hybrid entity - the City of Los Angeles:

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

BE IT FURTHER RESOLVED, that the City Council adopt the HIPAA Policies Notebook on file with the City Clerk as the official HIPAA Policy for the City of Los Angeles.

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 or eliminate the designation or policy(ies) as required under the HIPAA regulations.