

Council/Agency Meeting Held: _____	_____ City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date:                    2-5-07	Department ID Number:            CA 06-41

**CITY OF HUNTINGTON BEACH  
REQUEST FOR CITY COUNCIL ACTION**

**SUBMITTED TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Jennifer McGrath, City Attorney

**PREPARED BY:** Jennifer McGrath, City Attorney

**SUBJECT:** Adoption of Resolution No. 2007-9 Pertaining to the Health Insurance Portability and Accountability Act of 1996

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:** In order to properly protect confidential health care information pursuant to the Health Insurance Portability and Accountability Act, the City must adopt a resolution to designate itself as a hybrid entity and identify departments responsible for receiving confidential health care information.

**Funding Source:** No funds are required

**Recommended Action:** **Motion to: Adopt Resolution No. 2007-9** A Resolution of the City Council of the City Of Huntington Beach Pertaining to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91 (Hereinafter HIPAA) Providing For Compliance By The City with HIPAA as a Hybrid Entity

**Alternative Action(s):** Do not adopt Resolution No. 2007-9.

**Analysis:**

In 1996, Congress enacted the Health Insurance Portability and Accountability Act (Pub. L. 104-191; "HIPAA"). In general, HIPAA is the federal law that establishes standards for the privacy and security of health information, as well as standards for electronic data interchange (EDI) of health information. HIPAA regulations are divided into four Standards or Rules: (1) Privacy (discussed here), (2) Security, (3) Identifiers, and (4) Transactions and Code Sets.

E-2

The Privacy Rule is the most complex of the four, setting standards for how protected health information (PHI) "in any form or medium" should be controlled. (HIPAA's other rules cover only electronic information.) Privacy Rule protections extend to every patient whose information is collected, used or disclosed by covered entities. It imposes responsibilities on the entire workforce of a covered entity including all employees and volunteers. 45 CFR Parts 160 and 164, Subparts A and E.

When a City routinely handles protected health information in any capacity it will (in all probability) be considered a covered entity and must comply with the Privacy Rule. (See 45 CFR 160.103). Additionally, many cities conduct functions that make them "business associates" of a covered entity. A "business associate" is a person or organization that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. For example, a Fire Department may be a business associate of a paramedic service. In order to lawfully disclose protected health information to a business associate, a covered entity must enter into an agreement with each of its business associates. This agreement is required to obtain satisfactory assurances that the business associate will use the information only for the purposes for which the business associate has been engaged by the covered entity.

The Privacy Rule contains an exception for certain organizations that use or disclose protected health information (PHI) for only a part of its business operations. Such an entity, is known as a "hybrid entity" (164.504(a)-(c)). Hybrid entities must designate in writing "health care components" of the organization and describe the operations it conducts that constitute covered functions. After making this designation, most of the requirements of the Privacy Rule apply only to the health care components. For example, the organization must train only those members of its workforce who are involved in the health care component of the operations. However, it must ensure that the health care information is only available to those members i.e. identify the employees or classes of employees who will have access to protected health information, restrict access only to such employees and only for health plan functions; and provide procedures for resolving employee violations of the requirements of the Privacy Rule.

A covered entity that does not make this designation is subject to the Privacy Rule as to all of its staff and programs. In order to reduce the burden of the Privacy Rule, the City must designate itself as a hybrid entity thereby limiting the number of staff that could generate adverse legal consequences under HIPAA.

In order to designate itself as a hybrid entity, Huntington Beach must adopt a resolution designating itself as a hybrid entity, thereby avoiding the pitfalls of the entire City being a Covered Entity. This resolution must identify the City departments that are responsible for and have access to medical information of the general public as well as City employees. The resolution must also designate a City Privacy Officer that will be responsible for overseeing HIPAA related issues. In addition, departments identified as Health Care Components of the City must designate privacy officers that will coordinate with the Privacy Officer to ensure compliance with HIPAA rules. Upon adoption of the resolution, departments identified as Health Care Components must identify employees that will act as Privacy Officers and those employees must be trained regarding the proper disclosure of medical information.

# REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 2-5-07

DEPARTMENT ID NUMBER: CA 06-41

**Environmental Status:** Not applicable.

**Attachment(s):**

City Clerk's Page Number	No.	Description
4	1.	Resolution No. <u>2007-9</u> A Resolution of the City Council of the City of Huntington Beach Pertaining to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91 (Hereinafter HIPAA) Providing for Compliance by the City With HIPPA as a Hybrid Entity

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RESOLUTION NO. 2007-9

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH  
PERTAINING TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY  
ACT OF 1996, P.L. 104-91 (HEREINAFTER HIPAA) PROVIDING FOR COMPLIANCE BY  
THE CITY WITH HIPAA AS A HYBRID ENTITY

WHEREAS, the HIPAA Privacy Rule imposes privacy standards and requirements upon Covered Entities, which are health plans, health care clearing houses, and health care providers that transmit any health information in electronic form in connection with standard transactions within the scope of HIPAA, as defined under 45 C.F.R. § 160.103 of the Privacy Rule; and

It is the intent of the City to incorporate by reference the definitions of terms set forth in the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the Privacy Rule); and

The City, a municipal corporation under the laws of the State of California, is a single legal entity which does not function primarily as a Covered Entity; and

The City desires to provide compliance with HIPAA as a Hybrid Entity with designation of its Health Care Components under the Privacy Rule and providing for amendment of such designations; and

While most City departments, offices, and agencies do not perform Covered Entity functions that are covered by the Privacy Rule, there are City departments, offices, and agencies, divisions thereof, and the City's Group Health Plan that perform such covered functions, and therefore, the City may fall within the definition of a Covered Entity that is subject to the Privacy Rule; and

With the designation of City Health Care Components, the City comes within the definition of Hybrid Entity under the provisions of 45 C.F.R. § 164.105; and

A City Health Care Component that discloses Protected Health Information to a non-City entity that provides services to or acts on behalf of the Health Care Component must require that the non-City entity enter into a Business Associate Agreement with the City for its Health Care Component in compliance with the Privacy Rule; and

When a City Health Care Component discloses Protected Health Information to other City departments, offices, agencies, or divisions thereof that would be in a Business Associate capacity if such entities were separate and distinct, such other City departments, offices, agencies, or divisions thereof, herein designated as City Business Associate Components, must comply with certain requirements of the Privacy Rule; and

The City desires to: designate a Privacy Officer, providing said Officer with certain duties, and providing for amendment of such designation; to enter into contracts in furtherance of compliance with the Privacy Rule to ratify existing contracts, including but not limited to business associate agreements, that the City has entered into to as required by the Privacy Rule,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH DOES HEREBY RESOLVE AS FOLLOWS:

1. Definitions. The definitions of terms set forth in the HIPAA Privacy Rule are adopted and incorporated herein by reference as if fully set forth; unless otherwise defined herein, the terms used in this resolution shall have the same definitions as those set forth in the HIPAA Privacy Rule.

2. Health Care Component Designation for Hybrid Entity.

A. City departments, agencies, offices, and any divisions thereof, and the City Group Health Plans that perform Covered Entity functions under the Privacy Rule shall be designated as Health Care Components of the City. The following City departments, agencies, offices, divisions thereof, and City Group Health Plans are each hereby designated as a Health Care Component of the City: the Fire Department, including its billing service and ambulance service; the Police Department; and the City Administrator's Office, including City Services Risk Management Division and the City's Group Health Plan.

B. The City Council, upon recommendation of the City Attorney, may, by resolution, amend the designation of City Health Care Components by adding or removing City departments, agencies, offices, or divisions thereof, or Group Health Plans to or from such designation.

3. City Responsibility for Compliance with the Privacy Rule.

A. Notwithstanding the designation of the City Health Care Components, the City shall be ultimately responsible for developing policies and procedures to ensure compliance with the Privacy Rule, and shall be ultimately responsible for activities related to compliance with and enforcement of the Privacy Rule.

B. Any Protected Health Information and HIPAA-required documentation which is received or maintained by a Health Care Component shall not be disclosed to another Health Care Component and shall not be disclosed to another City department, agency, office, or other component of the City if such disclosure would be prohibited by the Privacy Rule were such other department, agency, office or other component a separate legal entity.

4. Privacy Officers.

A. The City Administrator or designee is hereby designated as the City Privacy Officer to implement and coordinate the City's compliance with the Privacy Rule.

B. Each Health Care Component shall have a designated Privacy Officer as follows: the Fire Chief or designee shall serve as the Privacy Officer for the Fire Department; the Police Chief, or designee shall serve as the Privacy Officer for the Police Department; and the Deputy City Administrator or designee shall serve as the Privacy Officer for the City Administrator, and for the City's Group Health Plan. Health Care Component Privacy Officers may appoint employees to assist in the performance of the Privacy Officer's responsibilities set forth herein.

C. Each Health Care Component Privacy Officer shall be responsible for the following:

- 1) Develop written policies and procedures for the Health Care Component as required by the Privacy Rule and in consultation with the City Attorney to assure compliance therewith;
- 2) Receive, process, and respond to requests for or regarding Protected Health Information received or used by the Health Care Component;
- 3) Serve as the Complaint Officer for the Health Care Component; and
- 4) Implement the Privacy Rule policies and procedures of the Health Care Component to assure compliance therewith.

5. Contract Authorization and Ratification.

A. Each Health Care Component Privacy Officer, upon approval of the City Attorney, is hereby authorized to enter into agreements necessary to comply with the Privacy Rule, including but not limited to business associate agreements, memorandums of understanding, confidentiality agreements, and trading partner agreements.

B. All existing business associate agreements entered into by the City in furtherance of compliance with the Privacy Rule are hereby ratified.

6. City Business Associate Components.

A. Any City department, office, agency, or division thereof that receives Protected Health Information from a Health Care Component in providing services or performing activities and functions that would be in the capacity of a Business Associate as defined under 45 C.F.R. § 160.103 of the Privacy Rule if such City department, office, agency, or division thereof were a separate and distinct legal entity, is hereby designated a Business Associate Component of the City's Hybrid Entity.

B. Pursuant to 45 C.F.R. § 164.504(e), each Business Associate Component shall meet the following requirements of the Privacy Rule:

- 1) Establish permitted uses and disclosure of Protected Health Information received by each Business Associate Component in compliance with the Privacy Rule;
- 2) Use and apply appropriate safeguards to prevent any use or disclosure of Protected Health Information not permitted by the Health Care Component or under the Privacy Rule;
- 3) Report to the Health Care Component and the City Privacy Officer any use or disclosure of the Protected Health Information of which it becomes aware that is not permitted by the Health Care Component or under the Privacy Rule;
- 4) Ensure that any party to whom the Business Associate Component provides Protected Health Information received from, or created or received by the Business Associate Component on behalf of the Health Care Component agrees to the same restrictions and conditions that apply to the Business Associate Component with respect to the Protect Health Information;
- 5) Make available Protected Health Information in accordance with 45 C.F.R. § 164.524;
- 6) Make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with 45 C.F.R. § 164.526;
- 7) Make available the information required to provide an accounting of disclosure in accordance with 45 C.F.R. § 164.528;
- 8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate Component on behalf of, the Health Care Component available to the United States Secretary of Health and Human Services for purposes of determining compliance with the Privacy Rule; and
- 9) Upon completion of the services to or activities on behalf of the Health Care Component, return or destroy all Protected Health Information received from, or created or received by the Business Associate Component on behalf of, the Health Care Component that is maintained in any form and retain no copies of such

information or, if such return or destruction is not feasible, extend the privacy protections established and as required by the Privacy Rule and limit further uses and disclosure to those purposes that make the return or destruction of the Protected Health Information infeasible.

7. Severability. If any section, subsection, sentence, clause, phrase or portion of this resolution is held to be invalid or unconstitutional, or unlawful for any reason, by any court of competent jurisdiction, such portion shall be deemed and is hereby declared to be a separate, distinct and independent provision of this ordinance, and such holding or holdings shall not affect the validity of the remaining portions of this ordinance.

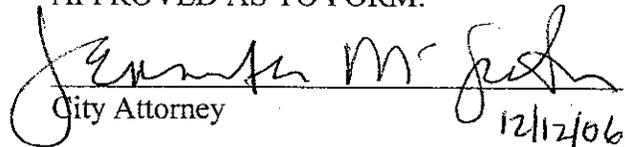
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

REVIEWED AND APPROVED:

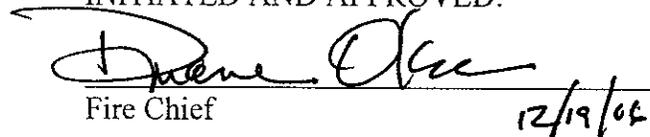
  
City Administrator

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
City Attorney 12/12/06

INITIATED AND APPROVED:

  
Fire Chief 12/19/06

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