[Administrative Code - Designation Under Health Insurance Portability and Accountability Act (HIPAA)]

Ordinance amending the Administrative Code to designate the City and County of San Francisco ("City") as a hybrid entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); to require the City Administrator to prepare a report identifying those City departments, and/or divisions thereof, that would qualify as covered entities or business associates under HIPAA, for approval by resolution of the Board of Supervisors; and to require the City Administrator to develop, maintain, and administer a citywide HIPAA compliance policy.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italics Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (*) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Administrative Code is hereby amended by adding Chapter 22H, consisting of Sections 22H.1 through 22H.5, to read as follows:

**CHAPTER 22H: DESIGNATION UNDER HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

**SEC. 22H.1. BACKGROUND.**
(a) The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d et seq., requires entities that perform certain health care functions to comply with regulations related to the use, disclosure, and security of individually identifiable health information.

(b) HIPAA permits a single legal entity that is engaged in both covered health care functions and non-covered functions to designate itself a "Hybrid Entity." To become a Hybrid Entity, the single legal entity must identify and designate as health care components those departments or divisions of the entity that perform 1) covered health care functions or 2) activities that involve the use or disclosure of protected health information on behalf of another department or division thereof that performs covered health care functions. Once the single legal entity makes a Hybrid Entity designation, HIPAA and its implementing regulations apply only to those components of the entity that are designated as health care components, and do not apply to the remainder of the entity.

SEC. 22H.2. HYBRID ENTITY DESIGNATION.

The City performs functions as a health care provider and health plan that make it subject to HIPAA. The City also performs many functions that are unrelated to health care and are not subject to compliance with HIPAA. The City is, therefore, a single legal entity that engages both in health care functions covered by HIPAA, and also in non-HIPAA-covered functions. Accordingly, the City is hereby designated as a Hybrid Entity.

SEC. 22H.3. DEFINITIONS.

For purposes of this Chapter 22H, the following terms have the following meanings:

"Business Associate" has the meaning set forth in 45 C.F.R. § 160.103, as may be amended from time to time.

"City" means the City and County of San Francisco.

"City Administrator" means the City Administrator, or the City Administrator's designee.
“Covered Entity” has the meaning set forth in 45 C.F.R. § 160.103, as may be amended from
time to time.

“Covered Function” has the meaning set forth in 45 C.F.R. § 164.103, as may be amended from
time to time.

“Health Care Component” has the meaning set forth in 45 C.F.R. § 164.103, as may be amended from
time to time.

“Hybrid Entity” has the meaning set forth in 45 C.F.R. § 164.103, as may be amended from
time to time.

“Protected Health Information” has the meaning set forth in 45 C.F.R. § 160.103, as may be amended from
time to time.

SEC. 22H.4. DESIGNATION OF COVERED ENTITIES AND BUSINESS ASSOCIATES:
REPORTS.

This Chapter 22H shall be administered by the City Administrator, who shall have the following
responsibilities:

(a) Within one month of the effective date of this Chapter 22H, and not less than every three
years thereafter, the City Administrator shall issue a report identifying every City department and/or
division thereof that would meet the definition of a Covered Entity or Business Associate if it were a
separate legal entity. This report shall be prepared in consultation with the City Attorney, based on a
review of the functions performed by City departments and divisions thereof.

(b) If, prior to the deadline for issuance of the second or subsequent reports required by
subsection (a), a new City department or division is established that would meet the definition of a
Covered Entity or Business Associate if it were a separate legal entity, or the function(s) of existing
City departments or divisions change in a way that would alter the existing designation of Health Care
Components approved by the Board of Supervisors referenced in subsection (c), the City Administrator
shall submit to the Board of Supervisors an interim report identifying every City department and/or
division thereof that would meet the definition of a Covered Entity or Business Associate if it were a
separate legal entity.

(c) Upon issuing a report referenced in subsection (a) or (b), the City Administrator shall
submit the report to the Board of Supervisors, accompanied by a proposed resolution to accept the
report and to designate as Health Care Components the City departments and/or divisions thereof that
would meet the definition of a Covered Entity or Business Associate if they were separate legal entities.
In making this designation, the Board is not bound by the City Administrator's report.

(d) The City Administrator shall publish on the City Administrator's website an up-to-date
list of the City departments and/or divisions thereof that are designated as Health Care Components by
resolution of the Board of Supervisors in accordance with subsection (c).

(e) The City Administrator shall retain documentation of each report issued pursuant to
subsection (a) or (b) and submitted to the Board of Supervisors under subsection (c), for six years from
the date of its submission.

(f) The City Administrator shall develop, maintain, and administer a citywide HIPAA
compliance policy concerning the use and disclosure of Protected Health Information in compliance
with HIPAA and its implementing regulations. Each City department that is designated as a Health Care
Component, or that operates a division or program that is designated as a Health Care
Component, shall be responsible for developing policies and procedures relevant to its specific HIPAA
compliance responsibilities, subject to the approval of the City Administrator, if the City Administrator
imposes an approval requirement on some or all affected departments.

SEC. 22H.5. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Chapter 22H, the City is assuming an undertaking only to
promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: ANNE PEARSON
Deputy City Attorney

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February 10, 2020 Rules Committee - RECOMMENDED

February 25, 2020 Board of Supervisors - PASSED ON FIRST READING
    Ayes: 11 - Fewer, Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Stefani, Walton and Yee

March 03, 2020 Board of Supervisors - FINALLY PASSED
    Ayes: 10 - Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Stefani, Walton and Yee
    Absent: 1 - Fewer

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 3/3/2020 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor