

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Dr. Grant Colfax, Director, Department of Public Health  
Naomi Kelly, City Administrator

FROM: Victor Young, Assistant Clerk *Victor Young*  
Rules Committee

DATE: December 26, 2019

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Rules Committee received the following proposed legislation on December 17, 2019:

**File No. 191279**

**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.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [victor.young@sfgov.org](mailto:victor.young@sfgov.org).

c: Greg Wagner, Public Health  
Dr. Naveena Bobba, Public Health  
Sneha Patil, Public Health  
Lynn Khaw, Office of the City Administrator  
Lihmeei Leu, Office of the City Administrator

[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 ~~*striketthrough italics Times New Roman font*~~.  
**Board amendment additions** are in double-underlined Arial font.  
**Board amendment deletions** are in ~~striketthrough 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.**

1           (a) The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C.  
2 §§ 1320d et seq., requires entities that perform certain health care functions to comply with regulations  
3 related to the use, disclosure, and security of individually identifiable health information.

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

## 12 13           **SEC. 22H.2. HYBRID ENTITY DESIGNATION.**

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

## 19 20           **SEC. 22H.3. DEFINITIONS.**

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

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

24           “City” means the City and County of San Francisco.

25           “City Administrator” means the City Administrator, or the City Administrator’s designee.

1 "Covered Entity" has the meaning set forth in 45 C.F.R. § 160.103, as may be amended from  
2 time to time.

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

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

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

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

11  
12 **SEC. 22H.4. DESIGNATION OF COVERED ENTITIES AND BUSINESS ASSOCIATES;**  
13 **REPORTS.**

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

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

21 (b) If, prior to the deadline for issuance of the second or subsequent reports required by  
22 subsection (a), a new City department or division is established that would meet the definition of a  
23 Covered Entity or Business Associate if it were a separate legal entity, or the function(s) of existing  
24 City departments or divisions change in a way that would alter the existing designation of Health Care  
25 Components approved by the Board of Supervisors referenced in subsection (c), the City Administrator



1 shall submit to the Board of Supervisors an interim report identifying every City department and/or  
2 division thereof that would meet the definition of a Covered Entity or Business Associate if it were a  
3 separate legal entity.

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

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

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

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

#### 22 23 **SEC. 22H.5. UNDERTAKING FOR THE GENERAL WELFARE.**

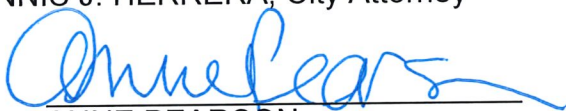
24 In enacting and implementing this Chapter 22H, the City is assuming an undertaking only to  
25 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an

1 obligation for breach of which it is liable in money damages to any person who claims that such breach  
2 proximately caused injury.

3  
4 Section 2. Effective Date. This ordinance shall become effective 30 days after  
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
7 of Supervisors overrides the Mayor's veto of the ordinance.

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

11 By:



12 ANNE PEARSON  
13 Deputy City Attorney

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