

File No. 191279

Committee Item No. 1

Board Item No. 11

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date February 10, 2020

Board of Supervisors Meeting

Date March 3, 2020

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum of Understanding (MOU) |
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Completed by: Victor Young

Date February 6, 2020

Completed by: VY

Date 2-19-20

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

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

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

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

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

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

22
23 SEC. 22H.1. BACKGROUND.
24
25

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.

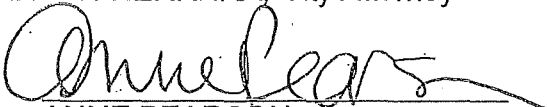
22
23 **SEC. 22H.5. UNDERTAKING FOR THE GENERAL WELFARE.**

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.

8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By: 
12 ANNE PEARSON
13 Deputy City Attorney

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LEGISLATIVE DIGEST

[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.

Existing Law

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.

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.

The City and County of San Francisco ("City") has not yet made a hybrid entity designation. Therefore, HIPAA and its implementing regulations currently apply to the entire City.

Amendments to Current Law

The proposed ordinance would designate the City as a hybrid entity under HIPAA, and would delegate to the City Administrator, or the City Administrator's designee, the duty to identify those departments, or divisions thereof, that perform activities that are covered by HIPAA. Within one month of the effective date of the ordinance, and not less than every three years thereafter, the City Administrator or her designee would be required to submit to the Board of Supervisors a list of departments that engage in activities that are covered by HIPAA, along with a proposed resolution to designate those departments as health care components.

Background

The City performs functions as a health care provider and health plan that make it subject to HIPAA. For example, the Department of Public Health operates hospitals and multiple health care clinics, and the Health Service System operates a health plan. The City also performs many functions that are unrelated to health care and are not subject to compliance with HIPAA.

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

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

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.

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



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Kanishka Cheng *KC*
RE: Administrative Code - Designation under Health Insurance Portability and
Accountability Act (HIPAA)
DATE: Tuesday, December 17, 2019

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.

Please note that Supervisor Mandelman is a co-sponsor of this legislation.

Should you have any questions, please contact Kanishka Cheng at 415-554-6696.

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HIPAA Hybrid Covered Entity Designation Ordinance

Rules Committee

February 10, 2019

Office of Mayor London N. Breed
City and County of San Francisco

Health Insurance Portability and Accountability Act



- Federal law designed to protect the confidentiality of personally identifiable health information.
- HIPAA allows large entities, like universities and municipalities, to designate as a hybrid covered entity where some parts of the entity engage in covered healthcare activities, while other parts do not.
- San Francisco has not yet made a hybrid designation, so by default, the entire City is covered by HIPAA
 - Compliance burden on departments that do not engage in covered activities
 - Increased exposure to liability for HIPAA violations
 - Lack of legal clarity on how to share health information across departments in compliance with HIPAA

Office of Mayor London N. Breed
City and County of San Francisco

Completing the HIPAA Designation Process



- The Controller's office, the City Attorney's office, and the Mayor's Office have been collaborating on the hybrid designation process.
- The City has worked with a HIPAA consultant to make recommendations about which departments should be included or excluded from the covered entity based on their specific functions.

HIPAA covered entities include:

- A health plan, a health care clearing housing, or a health care provider who transmits health records electronically for billing or administrative purposes.

Office of Mayor London N. Breed
City and County of San Francisco

Ordinance



- The ordinance declares the City and County of San Francisco as a hybrid covered entity with the majority of departments excluded and those departments that engage in covered activities included.
- Under this ordinance, the City Administrator will be responsible for maintaining the list of covered city departments.
- The City Administrator must submit the proposed list of departments via resolution to the BOS within a month of the effective date and no less than every three years.
- Should city department functions change, the City Administrator would bring an updated list before the BOS for approval by resolution.

Office of Mayor London N. Breed
City and County of San Francisco

Ordinance



- The City Administrator will also be responsible for developing, maintaining, and administering a citywide HIPAA compliance policy.
- While this legislation is focused on the legal designation of the City and County of San Francisco as a hybrid covered entity and clarifies our legal requirements under HIPAA, it is an essential first step to improving cross-departmental data sharing because it helps clarify which departments are subject to HIPAA's strict data sharing policies.

Office of Mayor London N. Breed
City and County of San Francisco

Next Steps



- The City Administrator will introduce a resolution that lists the included and excluded departments within 30 days.
- City Administrator will also be responsible for developing, maintaining, and administering a citywide HIPAA compliance policy.
- Implementation of training and compliance protocols.
- Development of data sharing agreements between city departments.

