



# HIPAA Hybrid Entity Policy

Policy No. B-23<sup>1</sup>

The Scope of this policy includes the following individuals:<sup>2</sup>

- ✓ Employees (including Appointed Officials, Probationary Employees, Full-Time At-Will Employees, Part-Time Employees, Temporary Employees, Civil Service Employees, Teamsters Employees, HPOA, HPSA, and IAFF Employees)
- ✓ Volunteers

## I. PURPOSE

To declare the City is a hybrid entity under HIPAA, designate the units within the City that perform functions covered under HIPAA (i.e., the health care components), and ensure that its covered health care components are HIPAA-compliant.

## II. POLICY APPLICATION

### A. HIPAA Generally

The Health Insurance Portability and Accountability Act of 1996, as amended, including by the Health Information Technology for Economic and Clinical Health Act of 2009, (HIPAA) is a federal law intended to promote efficient electronic transmission of individuals' health information and set a national standard for, and strengthen, the privacy and security of that information.<sup>3</sup> Regulations issued under HIPAA include the

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<sup>1</sup> This policy is not to be construed as a contract or an implied contract concerning any employment-related decision or term or condition of employment. The City reserves the right to revise, delete or add to any and all policies, procedures, work rules or benefits stated in this policy at its sole discretion. See Introduction, Administrative Policy No. A-01.

<sup>2</sup> The relevant definitions for the individuals identified in the Scope of this policy are defined in Introduction, Administrative Policy No. A-01.

<sup>3</sup> The terms "business associate," "covered entity," "covered functions," "covered entity," "electronic protected health information," "health care component," "health information," "individually identifiable health information" (IIHI), "protected health information" (PHI), "transaction," and "workforce" have the same meaning ascribed to each of those terms in 45 CFR §160.103. "CFR" means the Code of Federal Regulations, as amended. "HIPAA Rules" means the Privacy Rule (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164), Security Rule (45 CFR Part 160 and Subparts A and C of 45 CFR Part 164) and Breach Notification Rule (45 CFR Part 160 and Subparts A and D of 45 CFR Part 164).

Privacy Rule, the Security Rule, and the Breach Notification Rule. HIPAA applies to covered entities. HIPAA-covered entities include health plans, health care providers that transmit health information electronically in connection with a transaction covered by HIPAA, and health plan clearinghouses. Although the City does not primarily engage in any of these activities, some units within the City perform activities or functions that are subject to HIPAA.

## **B. Privacy Rule, Security Rule and Breach Notification Rule**

The Privacy Rule sets limits and conditions on the use and disclosure of individuals' health information by covered entities, establishes standards for individuals to understand and control how their health information is used, and gives individuals rights over their health information, including rights to examine, obtain a copy of, and correct their records. The Privacy Rule protects all individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral that (a) was created or received by a health care provider, health plan, employer, or health care clearinghouse, (b) relates to the physical or mental health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual, and (c) identifies the individual or might reasonably be used to identify the individual. The Privacy Rule calls this information "protected health information" (PHI).

The Security Rule requires the City to have in place appropriate administrative, technical, and physical safeguards to ensure the confidentiality, integrity, and availability of electronic PHI when it is stored, maintained, or transmitted.

The Breach Notification Rule requires HIPAA covered entities and their business associates to provide notification following a breach of unsecured PHI.

## **C. Hybrid Entity Designation**

Organizations like the City that conduct HIPAA-covered and non-covered functions may choose to designate themselves as hybrid entities for HIPAA compliance purposes. Although the City is responsible for HIPAA oversight, compliance, and enforcement requirements, as applicable, HIPAA and the HIPAA Rules apply only to the City's designated health care components, not the City's entire workforce. This Policy specifically addresses the requirements of 45 CFR §§ 164.103 and 164.105, which sections involve organizational requirements for hybrid entities under HIPAA and other items.

**D. Designation of Health Care Components**

1. The City has chosen to invoke hybrid entity status and, as a result, must designate as part of its health care component:
  - a. any department, division, or unit that, if it were a separate legal entity, would be a covered entity (a “Covered Unit”); and
  - b. any unit and workforce member that performs business, legal, audit, financial, or administrative services or functions involving the use or disclosure of PHI on behalf of a Covered Unit (a “Support Unit”).
  
2. The City designates its health care components in the chart below and describes the covered function or support function each performs:

Health Care Component	Type of Unit	Function
Accounts Receivable Division of Finance Department	Covered Unit	Health care clearinghouse (invoices EMS patients and processes payments and reviews requests for adjustments or write-offs of unpaid invoices sent to EMS patients)
City’s Self-Insured Health Plan Human Resources Department, Benefits Division	Covered Unit	Health plan (administers employee group health plan)
Henderson Fire Department	Covered Unit	Health care provider (provides emergency medical services (EMS))
Wellness Division within City Manager’s Office	Covered Unit	Health care provider (assists public safety employees and families with referrals to medical providers within their healthcare network and may learn PHI for the purpose of making the appropriate referrals)
City Archives and Records Division of the City Clerk’s Office providing Public Records Request Coordination and	Support Unit	Responding to public records requests or subpoenas may require reviewing PHI; and, the City Records Center and

Health Care Component	Type of Unit	Function
Records Storage to a Health Care Component		Archives may house records containing PHI
Civil Division of City Attorney's Office Providing Legal Support to a Health Care Component	Support Unit	Reviews legal requests for records covered under HIPAA, provides legal support to the City's Self-Insured Health Plan, Henderson Fire Department, Finance Department, and other City units, and handles negligence and other claims against EMS providers
Department of Information Technology	Support Unit	Provides security and support for information systems containing electronic PHI and disposes of equipment, hard drives from computers and copiers, and other devices that may include electronic PHI
Internal Audit Department	Support Unit	Performance audits, financial audits, or management support/consulting service activities may require reviewing PHI
Risk Management Division of Finance Department	Support Unit	Reviews cases that may require reviewing PHI
Self-Funded Health Insurance Committee	Support Unit	Administers the City's Self-Insured Health Plan

3. Each Covered Unit must develop, institute, periodically evaluate, and, as necessary, revise a policy that implements and complies with the HIPAA Rules. Each Support Unit that performs business, legal, financial, or administrative services or functions involving the use or disclosure of PHI on behalf of a Covered Unit must comply with that Covered Unit's policy, may institute additional policies and procedures addressing topics specific to their workplace environment, and is expected to develop HIPAA protocols supplementing this Policy when unit-specific procedures are needed.
4. As noted in Section II.C of the City's Human Resources Records Policy, Policy No. B-01, the City maintains employee health records in its capacity as an employer (e.g., workers compensation, requests for accommodation, leaves of absence,

pre-employment physicals, medical retirement requests, and other employment related medical documentation held in the City's role as the employer), those health records are expressly excluded from the definition of PHI under the HIPAA Rules, and, except for the unit specified in Section II.D.2 of this Policy, the City's Human Resources Department is not one of the City's designated health care components.

**E. Required Safeguards**

1. The City will ensure that each health care component complies with HIPAA and the HIPAA Rules, as applicable. In particular, the City shall ensure that:
  - a. Its health care components do not disclose PHI to another component of the City in a manner that would be prohibited under the Privacy Rule if the health care component and other component were separate legal entities;
  - b. Its health care components protect electronic PHI regarding another component of the City to the same extent that they would be required to protect this information under the Security Rule if the health care components and other component were separate legal entities; and
  - c. If a person performs duties as a workforce member for both the City's health care components and non-health care component in the same capacity, the person does not use or disclose PHI created or received in the course of (or incident to) the person's work for the health care component in a way that is prohibited under the Privacy Rule.
2. The City shall comply with HIPAA's requirements concerning compliance and enforcement (45 CFR Part 160, Subpart C).
3. The City shall comply with requirements under the Privacy Rule and Security Rule regarding implementation of compliance policies and procedures (45 CFR §§ 164.530(i) and 164.316(a)), including the safeguards addressed in Section II.E.1 in this Policy.
4. The City shall ensure compliance with requirements under the Privacy Rule and Security Rule regarding business associate arrangements and other organizational requirements (45 CFR §§ 164.504 and 164.314).

**F. City Privacy Officer, Unit Privacy Officer(s), and City Security Officer**

1. The City has designated a City Privacy Officer responsible for the coordination and implementation of all HIPAA privacy and confidentiality efforts within the City. The City's City Auditor is its City Privacy Officer for its health care components. The City Privacy Officer shall oversee all activities related to the development, maintenance, and adherence to HIPAA-compliant policies and procedures

regarding the use and disclosure of PHI. Any complaint concerning those policies and procedures must be forwarded to the City Privacy Officer for response.

2. Each Covered Unit, in consultation with the City Privacy Officer, may designate a workforce member to serve as its Unit Privacy Officer. The Unit Privacy Officer (a) is the primary contact for privacy issues and concerns regarding the use and disclosure of PHI and for patient rights regarding PHI; (b) is responsible for responding to patient requests for further information regarding the Covered Unit's Notice of Privacy Practices; and, (c) should be able to address most issues concerning the use and disclosure of PHI for the Covered Unit, including requests from individuals for access, amendment, disclosure, accounting, restriction, or confidential communications. Only a Covered Unit with a direct treatment relationship with a patient must have a Notice of Privacy Practices.
3. The City's Information Security Manager is its City Security Officer for its health care components.
4. For any questions regarding the City's compliance with HIPAA and the HIPAA Rules, please contact the City's HIPAA Privacy Officer and the City's Security Officer, as applicable.

**G. Ongoing Review**

The City's Privacy Committee will periodically review the City's health-care-component designations and this Policy and recommend revisions as needed.

**III. APPROVAL**

APPROVED BY:

Richard Derrick, City Manager/CEO

REVIEWED BY:

Nicholas Vaskov, City Attorney

Jennifer Fennema, Director of Human Resources

**Original signed document located in the Human Resources Department.**

EFFECTIVE DATE: 11/18/2020