



# City of Santa Fe, New Mexico

## memo

**DATE:** 7/25/2015  
**TO:** Finance Committee;  
Members of the Governing Body *LT*  
**VIA:** Lynette Trujillo, Human Resources Department; Greg Cliburn, Fire Department *gc*  
**FROM:** Theresa Gheen, Assistant City Attorney *TG*

**ITEM/ISSUE:**

REQUEST FOR APPROVAL OF A RESOLUTION DESIGNATING CITY A HYBRID ENTITY FOR PURPOSES OF HIPAA AND HITECH COMPLIANCE; DIRECTING THE CITY MANAGER TO DESIGNATE A SECURITY OFFICIAL AND A PRIVACY OFFICIAL; AND APPOINTING A HIPAA COMPLIANCE COMMITTEE

**Background**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)<sup>1</sup>, and regulations promulgated under them, require public and private entities that provide certain health care services or health care plans to comply with regulations relating to collection, use, disclosure and security of individually identifiable health information (“Protected Health Information” or PHI). PHI is information that relates to an individual’s past, present or future physical or mental condition; the provision of health care to the individual; or the past, present or future payment of the provision of health care to the individual.

Two City functions make it a “covered entity” under HIPAA. It provides health care services through its Fire Department and has a self-insured health plan, administered through the Human Resources Department with a third-party insurer. (Worker’s compensation and disability coverage are generally exempt from HIPAA (45 CFR §§ 160.103, 164.512).) We recommend the City identify these parts as “health care components” and some other parts as “business associates” in that they might create, receive, maintain or transmit PHI on behalf of the identified health care components. Other parts of the City do not provide functions covered under HIPAA. Therefore, by designating itself as a Hybrid Entity, the City will reduce compliance costs and exposure to potential liability.

**Costs of Non-Compliance**

HHS-OCR may fine entities (up to \$1.5 million per violation) and HITECH permits State Attorneys General to file for damages on behalf of individuals.

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<sup>1</sup> HITECH enacted changes to HIPAA with increased security requirements for electronic PHI, increased fines for noncompliance, and required HHS to conduct random compliance audits.

**Hybrid Entity Status**

With Hybrid Entity status, only designated covered areas must implement the physical, technical and administrative safeguards required by HIPAA. The financial impact should be a net positive because covered parts of the City will continue their current practices of not sharing PHI and non-covered parts will not have to comply with HIPAA.

To become a recognized Hybrid Entity, the governing body must designate in writing the health care components that must comply with HIPAA. Designated parts of the City that perform support activities for the components are included as “business associates.”

**Privacy Official, Security Official and Appointed HIPAA Compliance Committee**

We recommend that the City direct the City Manager to designate a Privacy Official and identify a Security Official responsible for the ongoing development of policies and procedures, as required by HIPAA. To facilitate continued compliance, we recommend the City create an appointed HIPAA Compliance Committee to meet at least yearly.

**RECOMMENDED ACTION**

Review and approve the Resolution Designating the City of Santa Fe as a Hybrid Entity for Purposes of HIPAA and HITECH Compliance; Directing the City manager to Designate a Security Official and Privacy Official; and Appointing a HIPAA Compliance.

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2015-\_\_**

3 **INTRODUCED BY:**

4  
5 Councilor Christopher M. Rivera

6  
7  
8  
9  
10 **A RESOLUTION**

11 **DECLARING THE CITY OF SANTA FE, NEW MEXICO A HYBRID ENTITY FOR**  
12 **PURPOSES OF HIPAA AND HITECH COMPLIANCE.**

13  
14 **WHEREAS**, the federal government enacted the Health Insurance Portability and  
15 Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and  
16 Clinical Health Act of 2009 (“HITECH”), and regulations promulgated under them by the U.S.  
17 Department of Health and Human Services, 45 Code of Federal Regulations Parts 160, 162 and  
18 164 (“HIPAA Regulations”), to protect patient health information; and

19 **WHEREAS**, a municipality that qualifies as a “covered entity” under HIPAA must  
20 comply with HIPAA and HITECH Security and Privacy Rules for the protection of protected  
21 health information (“PHI”) and Electronic Data Interchange requirements; and

22 **WHEREAS**, the City of Santa Fe (“City”) is a “covered entity” because it performs  
23 “covered functions,” as those terms are defined under 45 CFR Section 164.103, of a health plan  
24 administered by its Human Resources Department and provision of health care services by the  
25 Fire Department; and

1           **WHEREAS**, HIPAA Regulations allow an entity that performs covered and non-covered  
2 functions to designate itself as a Hybrid Entity; and

3           **WHEREAS**, a Hybrid Entity is defined as a single legal entity:

4           (1) That is a covered entity;

5           (2) Whose business activities include both covered and non-covered functions; and

6           (3) That designates health care components in accordance with paragraph  
7 § 164.105(a)(2)(iii)(D).

8 45 CFR 164.103; and

9           **WHEREAS**, the Governing Body has determined that it is in the City's best interest to  
10 declare itself a Hybrid Entity, it must document and formally designate the City's "health care  
11 components" in accordance with 45 CFR 164.504(a)(2)(iii)(D); and

12           **WHEREAS**, "health care components" include all parts of the City that would meet the  
13 definition of a covered entity if those parts were separate legal entities from the City; and

14           **WHEREAS**, "health care components" also include parts of the City that are "business  
15 associates", to the extent they may create, receive, maintain transmit or disclose PHI of the health  
16 plan administered by the Human Resources Department and health care services provided by the  
17 Fire Department; and

18           **WHEREAS**, after an assessment of the City's offices, departments, divisions and  
19 programs, only certain parts of the City are health care components and therefore should be  
20 designated as such; and

21           **WHEREAS**, HIPAA sets forth policies, procedures, and guidelines for maintaining  
22 security of PHI for health care components; and

23           **WHEREAS**, the City will continue to develop safeguards to prevent disclosure of PHI  
24 from a City health care component to another part of the City where HIPAA would prohibit  
25 disclosure if they were separate legal entities.

1           **NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
2 **CITY OF SANTA FE**

3           **Section 1:**     The City of Santa Fe Governing Body hereby designates the City a  
4 Hybrid Entity pursuant to 45 CFR Sections 164.103 and 164.105.

5           **Section 2:**     In compliance with 45 CFR Section 164.105(a)(2)(iii)(D), the City  
6 designates the following as City health care components, which would meet the definition of a  
7 covered entity if they were separate legal entities:

- 8           • The Human Resources Department to the extent of its covered activity of  
9           administering the City's health insurance benefits plans for medical, dental,  
10           vision, and health flexible spending plans only. This designation does not extend  
11           to the Human Resources Department's other functions, including, but not limited  
12           to the City's personnel management, and its hiring and disciplinary duties.
- 13           • The Fire Department to the extent of its covered activity of providing health care  
14           services only. This designation does not extend to other work performed by the  
15           Fire Department, including providing services as part of the City's workers'  
16           compensation program or fire response and investigatory activities.

17           In compliance with 45 CFR Section 164.105(a)(2)(iii)(D), the City additionally  
18 designates the following as City health care components to the extent that they meet the definition  
19 of a business associate if they were separate legal entities from the City and to extent that they  
20 create, receive, maintain, transmit or disclose PHI on behalf of the City's health plan and the Fire  
21 Department's health care services:

- 22           • The City Attorney's Office in its function involving legal representation.
- 23           • The Finance Department to the extent it provides billing, payment, and  
24           administration services.
- 25           • The Information Technology and Telecommunications Department to the extent

1           it provides technology services.

- 2           • The Audit Department to the extent of its auditing services.

3           **Section 3:**       Designations of covered entities must be maintained for six (6) years  
4 following termination of a covered entity and indefinitely for ongoing covered entities.

5           **Section 4:**       The City Manager or designee shall organize an appointed  
6 committee to meet at least once per year and recommend continued development and  
7 implementation of policies and procedures and any other actions necessary for  
8 compliance with HIPAA, HITECH, and HIPAA Regulations. The City Manager shall  
9 also designate a Privacy Official and identify a Security Official to co-chair the  
10 committee and who will be responsible for the further development and implementation  
11 of policies and procedures. Among other duties, the committee shall assist in continuing to  
12 develop safeguards and policies to ensure that:

- 13           • Designated health care components shall not disclose PHI to another non-health  
14 care component of the City in any circumstance in which HIPAA, HITECH and  
15 HIPAA Regulations would prohibit such a disclosure if the health care  
16 component and non-health care component were separate and distinct legal  
17 entities.
- 18           • Designated health care components shall not use or disclose electronic PHI that it  
19 creates or receives from or on behalf of another health care component in a way  
20 that is prohibited by the privacy and security standards under HIPAA, HITECH  
21 and HIPAA Regulations.
- 22           • If a worker performs duties for both a health care component and non-health care  
23 component of the City, the worker shall not use or disclose PHI created or  
24 received in the course of, or incident to, his or her work for the health care

1 component in a way prohibited by the privacy and security standards under  
2 HIPAA, HITECH and HIPAA Regulations.

3 Membership of the Committee shall consist of, at a minimum, individuals from the  
4 following departments or titles:

- 5 • Privacy Official;
- 6 • Security Official;
- 7 • Fire Department;
- 8 • Human Resources;
- 9 • Information Technology and Telecommunications Department;
- 10 • City Attorney's Office; and
- 11 • Finance Department.

12 PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

13  
14 \_\_\_\_\_  
15 JAVIER M. GONZALES, MAYOR

16 ATTEST:

17  
18 \_\_\_\_\_  
19 YOLANDA Y. VIGIL, CITY CLERK

20 APPROVED AS TO FORM:

21   
22 \_\_\_\_\_  
23 KELLEY A. BRENNAN, CITY ATTORNEY

24  
25 *Legislation/Resolutions 2015/Hybrid Entity Designation*

### City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

**Section A. General Information**

(Check) Bill: \_\_\_\_\_ Resolution:   X  

(A single FIR may be used for related bills and/or resolutions)

Short Title(s): **A RESOLUTION DESIGNATING THE CITY OF SANTA FE, NEW MEXICO A HYBRID ENTITY FOR PURPOSES OF HIPAA AND HITECH COMPLIANCE; DIRECTING THE CITY MANAGER TO DESIGNATE A SECURITY OFFICIAL AND A PRIVACY OFFICIAL; AND APPOINTING A HIPAA COMPLIANCE COMMITTEE.**

Sponsor(s): \_\_\_\_\_

Reviewing Department(s): City Attorney's Office

Persons Completing FIR: Theresa Gheen Date: 07/23/15 Phone: 955-2976

Reviewed by City Attorney: *Kelly A. Brennan* Date: 8/3/15  
(Signature)

Reviewed by Finance Director: *[Signature]* Date: 8-6-2015  
(Signature)

**Section B. Summary**

Briefly explain the purpose and major provisions of the bill/resolution:

- 1) To designate the City as a Hybrid Entity under HIPAA so that only covered health care and business associate components must comply with HIPAA, so that other parts of the City need not comply;
- 2) To direct the City Manager to designate a privacy official and security official, to comply with HIPAA; and
- 3) To create an appointed HIPAA Compliance Committee to meet at least yearly for ongoing compliance.

**Section C. Fiscal Impact**

**Note:** Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*

**1. Projected Expenditures:**

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs  
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs  
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: \_\_\_\_\_

X   Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Total:	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY _____	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	\$ _____	_____	\$ _____	_____	_____	_____

**3. Expenditure/Revenue Narrative:**

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

N/A

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**Section D. General Narrative**

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

No

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**2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

**The City must comply with HIPAA (including designating a privacy and security official and further developing policies and procedures) regardless of whether this resolution is passed. It is unknown how much it will cost the City to further develop policies and procedures.**

**It is expected that this resolution will reduce the burden on City finances and human resources by only designating the parts of the City that must be HIPAA compliant, thereby reducing the scope of the City workforce that must be HIPAA compliant. In addition, reducing the scope reduces the City's exposure to liability/fines in the event of non-compliance. Each event of non-compliance could cost the City \$1.5 million in fines.**

**The appointed committee will ensure that HIPAA compliance is reviewed at least annually.**

**Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

No

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**4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

**City employees who are insured under the City's health plan and members of the community who use the Fire Department health care services will have a more predictably HIPAA compliant City ongoing into the future.**

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