

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

2 **RESOLUTION NO. 2015-82**

3 **INTRODUCED BY:**

4
5 Councilor Christopher M. Rivera

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10 **A RESOLUTION**

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

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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.

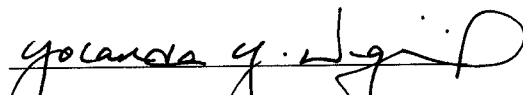
3 Membership of the Committee shall consist of, at a minimum, individuals from the
4 following departments or titles:

- 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.

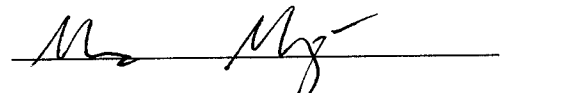
12 PASSED, APPROVED AND ADOPTED this 9th day of September, 2015.

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14 _____
15 JAVIER M. GONZALES, MAYOR

16 ATTEST:

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19 YOLANDA Y. VIGIL, CITY CLERK

20 APPROVED AS TO FORM:

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22 
23 KELLEY A. BRENNAN, CITY ATTORNEY

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25 *Legislation/Resolutions 2015/2015-82 Hybrid Entity Designation*