

**BOARD BILL NO. 137    INTRODUCED BY ALDERMAN GREGORY CARTER**

1            An Ordinance pertaining to the Health Insurance Portability and Accountability Act of  
2    1996, P.L. 104-91 (hereinafter HIPAA); repealing Ordinance 66281 and enacting in lieu thereof  
3    a new ordinance providing for compliance by the City with both the HIPAA Standards for  
4    Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164,  
5    Subparts A and E (the Privacy Rule) and the HIPAA Security Standards for the Protection of  
6    Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and C (the  
7    Security Rule); re-designating the City’s Hybrid Entity Health Care Components, with removal  
8    of the Health Department from such designation; re-designating the City’s Business Associate  
9    Components, with removal of the Department of Public Service Building Division, and requiring  
10   Business Associate Components to meet certain requirements of the Privacy Rule and Security  
11   Rule; appointing the City Privacy Officer and the Privacy Officers for each of the designated  
12   Health Care Components, providing for their duties, and providing for amendments of such  
13   designations; appointing the City Security Officer and the Security Officers for each of the  
14   designated Health Care Components, providing for their duties, and providing for amendments  
15   of such designations; authorizing the Health Care Component Privacy Officers, upon  
16   recommendation of the City Counselor, to enter into Business Associate Agreements in  
17   compliance with the Privacy Rule and the Security Rule, and upon recommendation of the City  
18   Counselor and the Board of Estimate and Apportionment, to enter into all other agreements  
19   required for compliance with the Privacy Rule and the Security Rule; and providing for a  
20   severability clause.

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1           **WHEREAS**, the HIPAA Privacy Rule and the Security Rule impose privacy and security  
2 standards and requirements upon Covered Entities, which are health plans, health care clearing  
3 houses, and health care providers that transmit any health information in electronic form in  
4 connection with standard transactions within the scope of HIPAA, as defined under 45 C.F.R.  
5 § 160.103 of the Privacy Rule, and

6           **WHEREAS**, the City, a municipal corporation under the laws of the State of Missouri, is  
7 a single legal entity which does not function primarily as a Covered Entity, and

8           **WHEREAS**, while most City departments, offices, and agencies do not perform Covered  
9 Entity functions that are covered by the Privacy Rule and the Security Rule, there are City  
10 departments, offices, and agencies, and divisions or sections thereof, and the City's group health  
11 plan(s) that perform such covered functions, and therefore, the City is a Covered Entity that is  
12 subject to the Privacy Rule and the Security Rule, and

13           **WHEREAS**, with the designation of City Health Care Components, the City comes  
14 within the definition of Hybrid Entity under the provisions of 45 C.F.R. § 164.105, and

15           **WHEREAS**, a City Health Care Component that discloses Protected Health Information  
16 to a non-City entity that provides services to or acts on behalf of the Health Care Component  
17 must require that the non-City entity enter into a Business Associate Agreement with the City for  
18 its Health Care Component in compliance with the Privacy Rule and the Security Rule, and

19           **WHEREAS**, when a City Health Care Component discloses Protected Health  
20 Information to another City department, office, agency, or division or section thereof that would  
21 constitute a Business Associate capacity if such entities were separate and distinct, such other

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1 City department, office, agency, or division or section thereof, herein designated as City  
2 Business Associate Component, must comply with certain requirements of the Privacy Rule and  
3 the Security Rule.

4 **NOW THEREFORE BE IT ORDAINED BY THE CITY OF ST. LOUIS AS**  
5 **FOLLOWS:**

6 **SECTION ONE.** Ordinance 66281, approved July 7, 2004, pertaining to the City's  
7 compliance with the HIPAA Privacy Rule and the designation of Health Care Components of the  
8 City as a Hybrid Entity, is repealed, and in lieu thereof a new ordinance is hereby enacted to read  
9 as follows:

10 **SECTION TWO. Definitions.** The definitions of terms set forth in the HIPAA  
11 Privacy Rule and the Security Rule are adopted and incorporated herein by reference as if fully  
12 set forth; unless otherwise defined herein, the terms used in this ordinance shall have the same  
13 definitions as those set forth in the Privacy Rule and the Security Rule.

14 **SECTION THREE. Health Care Component Designation for Hybrid Entity.**

15 A. A City department, agency, office, and any division or section thereof, and City  
16 group health plan(s) that performs a Covered Entity function under the Privacy Rule and the  
17 Security Rule shall be designated as Health Care Component of the City. The following City  
18 departments, agencies, offices, or divisions or sections thereof, and City group health plan(s) are  
19 each hereby designated as a Health Care Component of the City:

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1           1.       The Fire Department's Emergency Medical Services Division, including its  
2 billing service; and

3           2.       The City's Group Health Plan(s).

4           B. Upon recommendation of the City Counselor, the Board of Aldermen, may, by  
5 resolution, amend the designation of the City Health Care Components by adding or removing a  
6 City department, agency, office, and any division or section thereof, or group health plan to or  
7 from such designation. Any amendment of the City's designation of its Health Care  
8 Components shall be certified in writing by the Clerk of the Board of Aldermen, which  
9 certification shall be filed with the City Register within thirty (30) days of such amendment.

10           **SECTION FOUR.   City Responsibility for Compliance with the Privacy Rule and**  
11 **the Security Rule.**

12           A. Notwithstanding the designation of the City Health Care Components herein, the City  
13 shall be ultimately responsible for developing policies and procedures to ensure compliance with  
14 the Privacy Rule and the Security Rule, and shall be ultimately responsible for activities related  
15 to compliance with and enforcement of the Privacy Rule and the Security Rule.

16           B. A Health Care Component shall not disclose any Protected Health Information or  
17 HIPAA-required documentation which it receives or maintains to another City department,  
18 agency, or office if such disclosure would be prohibited by the Privacy Rule or the Security Rule  
19 if the Health Care Component and such other City department, agency, or office were separate  
20 and distinct legal entities.

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1           **SECTION FIVE. Privacy Officers.**

2           A. The Chief of the Fire Department's Emergency Medical Services is hereby  
3 designated as the City Privacy Officer to implement and coordinate the City's compliance with  
4 the Privacy Rule.

5           B. Each Health Care Component shall have a designated Privacy Officer. The Chief of  
6 the Fire Department's Emergency Medical Services shall serve as the Privacy Officer for the  
7 Emergency Medical Services Division, and the Employee Benefits Group Insurance Supervisor  
8 of the Department of Personnel shall serve as the Privacy Officer for the City's group health  
9 plan(s). A Health Care Component Privacy Officer may appoint an employee of the Health Care  
10 Component to assist in the performance of the Privacy Officer's responsibilities set forth herein.

11  
12           C. Upon recommendation of the City Counselor, the Board of Aldermen, may, by  
13 resolution, amend the designation of a Health Care Component Privacy Officer. Any  
14 amendment of the designation of the Health Care Component Privacy Officer shall be certified  
15 in writing by the Clerk of the Board of Aldermen and filed with the City Register within thirty  
16 (30) days of such amendment. For the designation of any additional City Health Care  
17 Component as provided for under Section Three hereof, the Board of Aldermen shall also  
18 designate the Privacy Officer for that Health Care Component and assign the responsibilities set  
19 forth in this Section Five.

20  
21           D. Each Health Care Component Privacy Officer has the following responsibilities:

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1           1. Develop written policies and procedures for the Health Care Component as  
2 required by the Privacy Rule and in consultation with the City Counselor;

3           2. Receive, process, and respond to requests for or regarding Protected Health  
4 Information received or used by the Health Care Component;

5           3. Serve as the Complaint Officer for the Health Care Component; and

6           4. Implement the Privacy Rule policies and procedures of the Health Care  
7 Component.

8           **SECTION SIX. Security Officers.**

9           A. The Fire Department's Administrative Deputy Fire Chief is hereby designated as the  
10 City Security Officer to implement and coordinate the City's compliance with the Security Rule.

11           B. Each Health Care Component shall have a designated Security Officer. The Fire  
12 Department's Administrative Deputy Fire Chief shall serve as the Security Officer for the  
13 Emergency Medical Services Division, and the Employee Benefits Group Insurance Supervisor  
14 of the Department of Personnel shall serve as the Security Officer for the City's group health  
15 plan(s). A Health Care Component Security Officer may appoint an employee of the Health  
16 Care Component to assist in the performance of the Security Officer's responsibilities set forth  
17 herein.

18           C. Upon recommendation of the City Counselor, the Board of Aldermen, may, by  
19 resolution, amend the designation of a Health Care Component Security Officer. Any  
20 amendment of the designation of the Health Care Component Security Officer shall be certified  
21 in writing by the Clerk of the Board of Aldermen and filed with the City Register within thirty

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1 (30) days of such amendment. For the designation of any additional City Health Care  
2 Component as provided for under Section Three hereof, the Board of Aldermen shall also  
3 designate the City official who shall serve as the Security Officer for that Health Care  
4 Component and assign the responsibilities set forth in this Section Six.

5 D. Each Health Care Component Security Officer has the following responsibilities:

6 1. Develop written policies and procedures for the Health Care Component as  
7 required by the Security Rule and in consultation with the City Counselor; and

8 2. Implement the Security Rule policies and procedures of the Health Care  
9 Component.

10 **SECTION SEVEN. City Business Associate Components.**

11 A. Any City department, office, agency, or division or section thereof that receives  
12 Protected Health Information from a Health Care Component in providing services or  
13 performing activities and functions that would be in the capacity of a Business Associate if such  
14 City department, office, agency, or division or section thereof were a separate and distinct legal  
15 entity, is hereby designated a Business Associate Component of the City's Hybrid Entity.

16 B. Pursuant to 45 C.F.R. § 164.504(e), each Business Associate Component shall meet  
17 the following requirements of the Privacy Rule:

18 1. Establish permitted uses and disclosures of Protected Health Information  
19 received by each Business Associate Component in compliance with the Privacy Rule;

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1                   2. Use and apply appropriate safeguards to prevent any use or disclosure of  
2 Protected Health Information not permitted by the Health Care Component under the Privacy  
3 Rule;

4                   3. Report to the Health Care Component and the City Privacy Officer any use or  
5 disclosure of the Protected Health Information of which it becomes aware that is not permitted  
6 by the Health Care Component under the Privacy Rule;

7                   4. Ensure that any party to whom the Business Associate Component provides  
8 Protected Health Information received from, or created or received by the Business Associate  
9 Component on behalf of the Health Care Component, agrees to the same restrictions and  
10 conditions that apply to the Business Associate Component with respect to the Protect Health  
11 Information;

12                   5. Make available Protected Health Information in accordance with 45 C.F.R.  
13 § 164.524;

14                   6. Make available Protected Health Information for amendment and incorporate  
15 any amendments to Protected Health Information in accordance with 45 C.F.R. § 164.526;

16                   7. Make available the information required to provide an accounting of  
17 disclosure in accordance with 45 C.F.R. § 164.528;

18                   8. Make its internal practices, books and records relating to the use and  
19 disclosure of Protected Health Information received from, or created or received by the Business  
20 Associate Component on behalf of the Health Care Component available to the United States

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1 Secretary of Health and Human Services for purposes of determining compliance with the  
2 Privacy Rule; and

3 9. Upon completion of the services to or activities on behalf of the Health Care  
4 Component, return or destroy all Protected Health Information received from, or created or  
5 received by the Business Associate Component on behalf of, the Health Care Component that is  
6 maintained in any form and retain no copies of such information or, if such return or destruction  
7 is not feasible, extend the privacy protections established and as required by the Privacy Rule  
8 and limit further uses and disclosure to those purposes that make the return or destruction of the  
9 Protected Health Information infeasible.

10 C. Pursuant to 45 C.F.R. § 164.314(a), each Business Associate Component shall meet  
11 the following requirements of the Security Rule:

12 1. Implement administrative, physical and technical safeguards that reasonably  
13 and appropriately protect the confidentiality, integrity, and availability of the Electronic  
14 Protected Health Information that it creates, receives, maintains, or transmits on behalf of the  
15 Health Care Component as required by the Security Rule;

16 2. Ensure that any party to whom the Business Associate Component provides  
17 Electronic Protected Health Information received from, or created or received by the Business  
18 Associate Component on behalf of the Health Care Component agrees to implement reasonable  
19 and appropriate safeguards to protect it; and

20 3. Report to the Health Care Component any security incident of which it  
21 becomes aware.

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1 D. The Comptroller's Office Internal Audit Section, the City Counselor's Office, and the  
2 Information Technology Services Agency are each hereby designated a City Business Associate  
3 Component to the extent that each provides services to or performs activities on behalf of a  
4 Health Care Component that would be in the capacity of a Business Associate as defined under  
5 45 C.F.R. § 160.103 of the Privacy Rule if such City components were separate and distinct legal  
6 entities.

7 D. Upon recommendation of the City Counselor, the Board of Aldermen may, by  
8 resolution, amend the designation of City departments, agencies, offices, or divisions or sections  
9 thereof as City Business Associate Components by adding or removing a City department,  
10 agency, office, or division or section to or from such designation. Such amendment of the City's  
11 designation of its Business Associate Components shall be certified in writing by the Board of  
12 Aldermen and filed with the City Register within thirty (30) days of such amendment.

13 **SECTION EIGHT. Contract Authorization.**

14 Each Health Care Component Privacy Officer, upon recommendation of the City  
15 Counselor, is hereby authorized to enter into Business Associate Agreements necessary to  
16 comply with the Privacy Rule and the Security Rule and, upon recommendation of the City  
17 Counselor and approval of the Board of Estimate and Apportionment, to enter into all other  
18 agreements required by the Privacy Rule and the Security Rule, including but not limited to  
19 trading partner agreements and confidentiality agreements.

20 **SECTION NINE. Severability.** If any section, subsection, sentence, clause, phrase or  
21 portion of this ordinance is held to be invalid or unconstitutional, or unlawful for any reason, by

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1 any court of competent jurisdiction, such portion shall be deemed and is hereby declared to be a  
2 separate, distinct and independent provision of this ordinance, and such holding or holdings shall  
3 not affect the validity of the remaining portions of this ordinance.