

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 3/12/03
Department Name: County Counsel
Department No.: 013
Agenda Date: 4/1/03
Placement: Departmental
Estimate Time: 15 minutes
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Stephen Shane Stark
County Counsel

STAFF CONTACT: Jerry F. Czuleger
Senior Deputy

SUBJECT: HIPAA - Business Associate Amendment (Model Language)
- Establishment of Privacy Officer Classification and Allocation of Position

Recommendation(s):

That the Board of Supervisors:

1. Approve the attached model language to be used to amend existing agreements that were entered into or amended since October 16, 2002, with contractors that are considered to be business associates under the Health Insurance Portability and Accountability Act (HIPAA).
2. Delegate to the County Department Heads the authority to independently execute a business associate amendment containing the attached model language, without further action of this Board.
3. Adopt resolution establishing Privacy Officer job classification, effective March 31, 2003, as follows:

ESTABLISH JOB CLASSIFICATION

County Privacy Officer (Class 001950), Range 6430 (\$5,993-\$7,316 per month).

4. Adopt resolution deleting the position of Electronic Data Processing Office Automation Coordinator and adding the County Privacy Officer position to the General Services Department, effective March 31, 2003, as follows

DELETE POSITION – GENERAL SERVICES DEPARTMENT (#8815)

Delete: 1 (1.0 FTE) Electronic Data Processing Office Automation Coordinator, Senior (Class 002481), Salary Range 5910 (\$4624-\$5645 monthly).

ADD POSITION – GENERAL SERVICES DEPARTMENT (#2500)

Add: 1 (1.0 FTE) County Privacy Officer (Class 001950), Salary Range 6430 (\$5993-\$7316).

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

HIPAA is Federal legislation (P.L. 104-191) that was adopted in 1996 and has staggered implementation deadlines. HIPAA was introduced as a bill to improve the portability and continuity of health insurance coverage; to combat waste, fraud and abuse in health insurance and health care delivery; to improve access to services and coverage; and to simplify the administration of health insurance. The requirements apply specifically to entities considered to be a Health Plan, Healthcare Clearinghouse, Healthcare Provider or Business Associate as defined by HIPAA.

Santa Barbara County is required to comply with HIPAA since the County is a healthcare provider and is a sponsor of at least one health plan. Under HIPAA the County is characterized as a “Hybrid Entity”, because not all of its functions are covered by HIPAA. There are three components of HIPAA – Privacy (establishes requirements for the handling of certain health care information to ensure privacy of patient health care data); Electronic Health Care Transactions and Code Sets (imposes national standardization); and Security (establishes requirements to ensure the security of patient health care information). The compliance deadline for the Privacy Rule is April 14, 2003, the deadline for the Transactions and Code Sets Rule has been extended to October 16, 2003, and the deadline for the Security rule is April 21, 2005.

The Privacy Rule requires the County to implement a number of safeguards to ensure privacy of patient health care data, including the requirement to enter into “business associate agreements” with certain entities that contract with the County and handle individually identifiable health information. A “business associate agreement” obligates contractors to also comply with the Privacy Rule, if they handle individually identifiable health information on behalf of the County. Business associate agreements must be entered into with applicable contracting entities for all contracts entered into after April 14, 2003. Additionally, if an affected agreement was entered into or modified between October 16, 2002 and April 14, 2003, a “business associates agreement” must be entered into with such contracting entity by April 14, 2003.

The attached model language for a business associate agreement complies with the HIPAA Privacy Rule requirements. It is requested that your Board approve the utilization of the model language and delegate to the individual Department Heads the authority to execute such agreements, without further Board action. The proposed model language will be used primarily to amend contracts that were entered into or amended between October 16, 2002 and April 14, 2003. It may also be used for contracts that are entered into or amended after April 14, 2003, but inadvertently did not incorporate the requisite business associate agreement language.

The attached model language will be modified to be used as a standard exhibit in future County contracts which require business associate agreements.

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Additionally, the HIPAA Privacy Rule requires a covered provider to designate a privacy official for the development and implementation of its policies and procedures and to identify a contact person who is responsible for receiving complaints.

A County-wide HIPAA Privacy Task Force, under the direction of the County Administrator's office, has been meeting since August 2001 to monitor regulatory requirements, develop a Countywide privacy program and implement appropriate strategies to promote compliance with the program. Because of the degree of assessment, policy and form development, training, and compliance monitoring involved in this new Privacy Rule, the Task Force recommended and the Human Resources Department concurred that a full-time management position is appropriate for the development, implementation and maintenance of the County's comprehensive privacy program. For example, the Privacy Officer is required to keep an audit trail of sharing of Personal Health Information (PHI) if it is not for treatment, billing, health care operations or authorized by the patient. This will involve inventorying and creating Business Associate Agreements with dozens of vendors across County departments such as transcription services and computer support firms. Also the Privacy Officer will be responsible for developing all legally required documents and forms including, but not limited to, Notice of Information Practices, Consent, Authorization, Requests to Access/Amend Record, Request to Restrict Access and Denial of Access or Amendment to Record. Most importantly, the Privacy Officer will implement comprehensive training and role-based education programs relevant to privacy issues for all County employees including a system for tracking and documenting ongoing privacy and HIPAA required training.

The County's HIPAA committee requested that Human Resources conduct a study to develop a new classification of County Privacy Officer. In collaboration with the County's HIPAA committee and after gathering information from other counties, Human Resources has developed a job specification and recommends the creation of a County Privacy Officer classification. Human Resources reviewed comparable classifications from other counties and internal salary relationships to determine an appropriate salary. This request to establish the new classification is being presented at this time because HIPAA regulations mandate designating a privacy officer by April 14th, 2003. The County Administrator's Office has authorized the General Services Department to delete a vacant funded position and add the County Privacy Officer. There will be no change in FTEs.

Mandates and Service Levels:

The County is mandated to comply with the provisions of HIPAA. The Federal Privacy Rule (45 C.F.R. ¶ 164.530 a) requires a covered provider to designate a privacy official for training and the development and implementation of its policies and procedures. In addition, a provider will be required to identify a contact person who is responsible for receiving complaints. (45 C.F.R. ¶ 164.530 b). At its inception, the provider can designate one person for both functions (Preamble to Rule).

Fiscal and Facilities Impacts:

HIPAA is an unfunded Federal mandate. The General Services department will delete a vacant position and add the Privacy Officer position, therefore not increasing the number of positions for the Department. It is anticipated that this position will be recruited for and hired by the beginning of pay period 08/2003 (April 14, 2003). Therefore, the remaining cost for fiscal year is estimated at \$30,542 and the ongoing

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annual cost for this position is estimated to be \$112,584 which will be paid out of Program 1010 Fund 0001 of the General Services Budget. The funding source for this position will be from the Tobacco Tax Settlement Fund.

Special Instructions:

Concurrence:

Human Resources Department
General Services Department