

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 4/1/03
Department Name: County Administrator
Department No.: 012
Agenda Date: 4/15/03
Placement: Departmental
Estimate Time: 20 mins.
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Michael F. Brown, County Administrator
Office of the County Administrator

STAFF CONTACT: Tara Brown
681-5146

SUBJECT: **PRIVACY POLICIES**

Recommendation(s):

That the Board of Supervisors:

- A. Adopt the attached 24 County specific privacy policies to implement the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule standards and requirements. (Attachment A)
- B. Approve the attached ten (10) County specific operational procedures to implement the HIPAA Privacy Rule standards and requirements. (Attachment B)
- C. Authorize the County Administrator to approve revisions to the operational procedures related to the County's privacy practices as may become necessary.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 6: A County Government that is Accessible, Open, and Citizen-Friendly.

Executive Summary and Discussion:

On April 1, 2003, we informed your Board about the Health Insurance Portability and Accountability Act (HIPAA), which is Federal legislation (P.L. 104-191) that was adopted in 1996. HIPAA enhanced health insurance accessibility for people changing employers or leaving the workforce and encouraged transmission of confidential health care data electronically by requiring standard data and code sets. However, to ensure that health information would remain confidential, Congress imposed comprehensive patient privacy regulations that become effective April 14, 2003 and computer security regulations that become effective April 21, 2005. Your Board established a County Privacy Officer position and approved a standard Business Associate Agreement as part of these requirements. The impacted County workforce has been trained on the new regulations, and a Notice of Privacy Practices is now being given to all covered individuals.

The Privacy Rule increased the rights of individuals to access and amend their own personal medical records. It also granted new rights for patients to obtain copies of health claim information, eligibility and enrollment information,

referral authorizations and utilization review documentation of denials, and information about claims payment and coordination of benefits. It imposed new requirements on treatment providers and health plans to tell the patient, if requested, about the all disclosures it makes even if permitted by law. At the same time, it restricted access to the health records to other people to the "minimum necessary" information required to accomplish the task and imposed severe penalties for unauthorized disclosure.

Santa Barbara County is required to implement policies and procedures effective April 14, 2003 with respect to individually identifiable, protected health information in order to comply with the HIPAA Privacy Rule. HIPAA privacy regulations set a minimum federal standard. Until now, protecting patient privacy was left up to each state. Because California has long enforced medical records protections, the policies and procedures must comply with the federal law and the provisions of state law that give the individual greater protection. The legal preemption analysis published by the California Healthcare Association was used to develop Santa Barbara County specific policies and procedures. For example, California Health and Safety Code 123110 (b) requires that copies of records be transmitted within 15 days after receiving a written request, while federal law allows 30 days. Your Board is asked to adopt the more stringent California standard of 15 days.

The County departments impacted by these policies include the departments of Alcohol, Drug and Mental Health Services, Fire, Human Resources, Public Health, Probation, and the Sheriff as well as certain support departments that use protected health information to perform a function on behalf of these departments including the Auditor-Controller, County Counsel, General Services, Social Services, and the Treasurer-Tax Collector. Each impacted department was given the opportunity to comment on the proposed policies and procedures. All unions were offered the opportunity to meet about the impact of HIPAA.

Mandates and Service Levels:

The County is mandated to comply with HIPAA. 45 Code of Federal Regulations (CFR) Part 164.530 (i) requires that a covered entity implement policies and procedures with respect to protected health information that are designed to comply with the HIPAA. It requires that the covered entity change its policies and procedures as necessary to comply with changes in the law and, if the change materially affects the content of the Notice of Privacy Practices, the Notice must be revised and reissued.

Fiscal and Facilities Impacts:

HIPAA is an unfunded federal mandate. The total cost of implementing HIPAA is unknown.

The consultant's cost for preparing these County policies and procedures and specific Public Health Department policies and procedures is \$15,000. The Privacy Officer position is estimated to be \$112,584 annually.

The total impact to facilities is unknown. Physical safeguards are required to limit access to areas when protected health information is maintained. For example, badges and keys must be appropriately distributed, tracked, and retrieved upon employee termination.

Special Instructions:

Please return one copy of the minute order to General Services, attention: Privacy Officer.

Concurrence:

County Counsel
General Services Department

ATTACHMENT A

Santa Barbara County Protected Health Information Privacy Policies:

- # 1.1 Protected Health Information (PHI) cannot be used or disclosed without individual authorization except if the information is used for health care treatment, payment, or health care operations or required by law.
- # 1.2 Only the minimum necessary information will be used or disclosed to accomplish the business purpose, except if the information is used for treatment, authorized by the individual or personal representative of the covered person, or required by law.
- # 2.1 No consent or authorization is required for treatment, payment or health care operations; however, County departments may request that the patient sign an assignment of benefits authorizing the health plan to pay benefits directly to the County.
- # 2.2 Treatment will be provided regardless of whether the individual signs an authorization to assign benefits.
- # 2.3 County staff will account for permitted disclosures except those made:
- A. To carry out treatment, payment, or health care operations,
 - B. To the individual or authorized by the individual,
 - C. To correctional institutions for custodial care,
 - D. For national security or intelligence purposes, or
 - E. In limited data sets for approved research purposes.
- # 3.1 Prior to any disclosure, County employees will verify the identity and authority of the person requesting protected health information (PHI) and obtain any documents or statements that are a condition of disclosure.
- # 3.2 Prior to any release of records, County employees will verify the validity and completeness of the written authorization.
- # 4.1 Denied access - A minor's parent or other representative will not be entitled to inspect or obtain copies of the minor's patient records if the minor has right of inspection and consent for treatment or the provider determines that access would have a detrimental effect.
- # 4.2 Restricted access – A HIPAA-compliant authorization signed by the patient or the personal representative, or statutory authority is required to disclose:
- A. A minor's family planning services, pregnancy, reportable disease, rape, sexual assault, outpatient mental health, and drug and alcohol problems to the minor's parents or guardians.
 - B. HIV test results, except to employees or agents who provide direct patient care and treatment to the infected person, to law enforcement in correctional facilities involved in the infected person's care, and to exposed victims under protocol. A separate, signed authorization is required for disclosure of HIV test results.
 - C. Alcohol, drug and mental health services, except as required by law. A separate, signed authorization is required for disclosure of psychotherapy notes.
 - D. PHI for research or non-governmental public health purposes, except where a waiver has been approved by an Institutional Review Board (IRB) a limited data set may be disclosed.
 - E. PHI for employment-related or insurance determinations.
 - F. PHI for marketing, fund raising, and media releases or inquiries, except that the general condition may be released.
- # 4.3 Notice with Right to Object – A subpoena for civil court proceedings or an administrative hearing requires that the subpoenaing party give written notice to the person before protected health information (PHI) is disclosed, except to the extent necessary to comply with Workers' Compensation laws.

- # 5.1 The County treatment provider “Notice of Privacy Practices” will be given to individuals at the time of first service delivery beginning April 14, 2003 or, in emergency situations, as soon as reasonably practical after service delivery.
- # 5.2 A “Notice of Privacy Practices” for the County Mental Health Plan will be given to all covered individuals beginning April 14, 2003. A “Notice of Privacy Practices” for the Medically Indigent Adult (MIA) services program and the County Self-Funded Dental Plan will be given to covered individuals beginning April 14, 2004.
- # 6.1 Clients will be provided access to or copies of their health information within fifteen (15) working days of receiving an individual’s written request.
- # 6.2 A patient’s amendment or addendum to the designated record will be included with all subsequent requests for records.
- # 6.3 All reasonable requests for confidential communications by alternate means or at alternative locations will be accommodated.
- # 7.1 The County Privacy Officer will receive complaints and recommend corrective actions and mitigation measures for harmful effects to individuals due to inappropriate uses or disclosures of Protected Health Information (PHI).
- # 7.2 An employee who violates County privacy policies and procedures is subject to disciplinary action up to and including dismissal from employment and legal action by the affected individual.
- # 7.3 Retaliatory actions cannot be taken against an individual who files a complaint, testifies, or participates in an investigation.
- # 8.1 Departments will ensure that each affected workforce member receives training on the County privacy policies and procedures, and signs a confidentiality agreement within thirty (30) days of hire.
- # 8.2 The County Privacy Officer will work with affected departments to perform a periodic audit of administrative, physical, and technical safeguards to protect health information.
- # 9.1 Departments will have a written contract with each business associate who handles protected health information (PHI) to describe how it will safeguard PHI in effect no later than April 14, 2004 for all new, renewed, or modified contracts for the period beginning October 15, 2002.
- # 10.1 Departments will maintain and protect individually identifiable, health information in a designated record set for a minimum of six years after the date of last service or as required by California law.
- # 10.2 Departments will charge the actual labor cost of clerical staff plus the amount allowed per page by statute to cover the cost of copying protected health information or preparing a summary of the information, except for purposes of treatment or eligibility for public benefits.
- # 10.3 There is no charge for an individual or the personal representative to review or amend health information records and to receive the first accounting of disclosures in a twelve-month period.