EXECUTIVE ORDER NO. 4-17

HIPAA COMPLIANCE DIRECTIVE
(As amended February 16, 2018)

WHEREAS, The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") requires entities that perform certain health care functions to comply with regulations related to the use, disclosure, and security of protected health information; and

WHEREAS, the City of Philadelphia (the "City") is committed to compliance with all applicable laws relating to data privacy and security including but not limited to the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule"), the Security Standards for the Protection of Electronic Health Information (the "Security Rule"), and the Breach Notification Rule issued pursuant to HIPAA (collectively, the "HIPAA Rules"); and

WHEREAS, the City performs functions as a health care provider and health plan ("Covered Functions") that make it subject to the HIPAA Rules, as well as functions that do not; and

WHEREAS, HIPAA permits entities that are engaged in both Covered Functions and non-covered functions to designate themselves as "Hybrid Entities," in which case the HIPAA Rules do not apply to the non-covered functions; and

WHEREAS, in 2002, the City convened a HIPAA Steering Committee to oversee the implementation of the City's HIPAA compliance program, and the Steering Committee determined that the City could more effectively and efficiently operate by declaring itself a Hybrid Entity and formally designating the City's health care components, in accordance with 45 C.F.R. §164.105 (a)(2)(iii)(D); and

WHEREAS, based on this assessment, the City identified those City departments, units, and workforce members that perform Covered Functions ("Covered Units") or perform business, legal, financial, or administrative functions involving access to protected health information on behalf of the Covered Units ("Support Units"), both of which must comply with the HIPAA Rules; and

WHEREAS, as a Hybrid Entity, the City has ongoing responsibilities to implement reasonable and appropriate policies and procedures to ensure that its Covered Units and Support Units comply with the HIPAA Rules; and

WHEREAS, as a Hybrid Entity, the City is required to designate a privacy official who is responsible for the development and implementation of the policies and procedures required by the Privacy Rule, as well as a security official who is responsible for the development and implementation of the policies and procedures required by the Security Rule; and

WHEREAS, the City recognizes that its designation of Covered Units and Support Units is a dynamic and ongoing process that requires periodic reassessment and amendment, and has determined that review and re-designation of such Covered Units and Support Units is appropriate at this time; and

WHEREAS, oversight and direction at the executive level is a necessary component of any effective HIPAA compliance program;

NOW, THEREFORE, I, JAMES F. KENNEY, Mayor of the City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows:

Section 1. Re-Designation of the City's Health Care Components.

A. The following units or divisions of City departments and offices are hereby officially designated as the Covered Units of the City:

1. Ambulatory Health Services, a division of the Philadelphia Department of Public Health ("PDPH");
2. Office of Behavioral Health and Intellectual disAbility Services;
3. Emergency Medical Services, a division of the Philadelphia Fire Department;
4. Health and Welfare Benefits Unit of the Office of Human Resources;
5. Philadelphia Public Health Laboratory, a division of PDPH;
6. Sexually Transmitted Disease Control Program of the Division of Disease Control, a division of PDPH; and
7. Philadelphia Nursing Home, a division of PDPH.

B. The following may function, in whole or in part, as Support Units of the City:

1. Records Department;
2. Office of Innovation and Technology;
3. Law Department;
4. Office of the Director of Finance;
5. Fire Department;
6. Data Management Office, a unit of the Office of the Deputy Managing Director for Health and Human Services;
7. Office of Homeless Services;
8. Department of Human Services;
9. Mayor's Office of Community Empowerment and Opportunity;
10. Streets Department; and
11. Additional City departments, offices, or portions thereof that perform support functions for Covered Units and are officially recorded as Support Units by the Steering Committee.

C. The City's health care components shall include all workforce members within the Covered Units, as well as those workforce members within the Support Units who have access to protected health information in order to provide business, legal, financial or administrative services to a Covered Unit or otherwise assist a Covered Unit in performing its Covered Function(s). Each department or office listed in Section 1.B. shall document the individuals or classes of individuals who function as part of its Support Unit, and report such to the HIPAA Steering Committee annually and upon request. All workforce members within the City's health care components are subject to the HIPAA Rules and all policies and procedures adopted by the City in furtherance of HIPAA compliance ("City HIPAA policies").

Section 2. HIPAA Steering Committee

A. The HIPAA Steering Committee is hereby established within the Managing Director's Office to advise the Mayor and his or her designee (the "Mayor's Designee") regarding the continuing implementation, management, and enforcement of the City's HIPAA compliance program and any changes or adjustments thereto that may be required or appropriate. The Committee shall make recommendations regarding:

1. Periodic updates to the City's designation of its health care components;
2. Significant business and policy decisions that impact the City's HIPAA compliance;
3. The adoption and revision of City HIPAA policies;
4. The adequacy and effectiveness of the City's HIPAA compliance activities;
5. The delegation of HIPAA compliance responsibilities to the Covered and Support Units, and allocation of resources and personnel to enable such units to fulfill their responsibilities;
6. Actions needed to ensure that the Covered and Support Units cooperate in a timely manner with all investigations, compliance reviews, audits, and requests by federal or state officials related to the City's compliance with the HIPAA Rules;
7. Actions needed to ensure that appropriate sanctions are imposed on City workforce members who violate the HIPAA Rules or City HIPAA policies; and
8. Actions needed to address identified deficiencies, enforcement events, and significant regulatory changes reported by the City HIPAA Privacy Officer and/or Security Officer.

B. The HIPAA Steering Committee shall be chaired by the Mayor's Designee, and shall also include the following members or, with the permission of the Mayor's Designee, the designee of each:

1. The Fire Commissioner;
2. The Health Commissioner;
3. The Director of the Office of Human Resources;
4. The Director of the Office of Behavioral Health and Intellectual disAbility Services;
5. The Chief Innovation Officer;
6. The City Risk Manager;
7. The City Solicitor;
8. The City HIPAA Privacy Officer, as a non-voting member; and
9. The City HIPAA Security Officer, as a non-voting member.

C. The role of the HIPAA Steering Committee shall be advisory in nature. The Mayor or the Mayor's Designee shall seek the recommendations of the Steering Committee concerning all HIPAA-related matters and shall issue decisions concerning such matters in writing with a copy to the Steering Committee.

D. In the discretion of its chair, the HIPAA Steering Committee may operate from time to time by consensus, by vote of the members present, or by informal discussion. The views of the Steering Committee and its members are not binding on the Mayor or the Mayor's Designee, but should be freely expressed in order to facilitate sound decision-making and compliance.

E. The Mayor's Designee shall be responsible for creating and maintaining records of the Committee and the City's official designation of its health care components in a manner consistent with the HIPAA Rules and applicable City record retention policies.

Section 3. City HIPAA Privacy Officer and City HIPAA Security Officer

A. The position of City HIPAA Privacy Officer ("CHPO") is hereby formally established within the Law Department, appointed by and reporting to the City Solicitor. The CHPO shall be responsible for monitoring the City's compliance with the Privacy Rule and providing periodic reports to the Steering Committee on such compliance; overseeing the development, implementation, and maintenance of City policies, procedures, and workforce training as required by the Privacy Rule; overseeing the investigation and reporting of HIPAA incidents; managing the City's response to governmental audits and investigations; receiving complaints from individuals regarding the City's privacy policies or practices; and providing guidance to City departments and offices regarding compliance with the Privacy Rule.

B. The position of City HIPAA Security Officer ("CHSO") is hereby formally established within the Office of Innovation and Technology, appointed by and reporting to the Chief Innovation Officer. The CHSO shall be responsible for monitoring the City's compliance with the Security Rule and providing periodic reports to the Steering Committee on such compliance; overseeing the development, implementation, and maintenance of City policies, procedures and workforce training to ensure the confidentiality, availability, and integrity of City electronic protected health information ("ePHI") as required by the Security Rule; collaborating with the CHPO to investigate and mitigate HIPAA incidents; ensuring that periodic risk assessments of all City information systems containing ePHI are conducted and security measures are implemented to sufficiently manage identified risks and vulnerabilities; and providing guidance to City departments and offices regarding compliance with the Security Rule.

Section 4. Cooperation

All City officers and workforce members shall cooperate with the CHPO, the CHSO, the HIPAA Steering Committee, and the Mayor's Designee in connection with HIPAA matters; and shall promptly bring concerns about such matters to the attention of any of them.

Section 5. Effective Date

This Order shall be effective immediately upon its execution.

Date: 2/23/18

By: James F. Kenney
James F. Kenney, Mayor

(Original version signed April 12, 2017)