

**AGENDA ITEM 22**

Discuss and take appropriate action concerning adopting HIPAA policies and procedures regarding the privacy of protected health information.

Moved: **Commissioner Heiligenstein**

Seconded: **Judge Doerfler**

Motion: To approve adopting HIPAA policies and procedures regarding the privacy of protected health information.

Vote: **5 - 0**

< Attachment >

**COURT ORDER**

ORDER NO.:

DATE:

**STATE OF TEXAS** §  
**COUNTY OF WILLIAMSON** §

BE IT REMEMBERED, at a regular meeting of the Commissioners Court of Williamson County, Texas, held on APRIL 8, 2003, on motion made by COMMISSIONER HEILIGENSTEIN, and seconded by JUDGE DOERFLER, the following Order was adopted:

WHEREAS, Congress adopted the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which authorized the Secretary of the U.S. Department of Health and Human Services to promulgate rules regarding the privacy of certain health information; and

WHEREAS, the Secretary has adopted such privacy rules (located at 45 Code of Federal Regulations, Parts 160 and 164) that apply to health plans, health care clearinghouses, and health care providers who engage in electronic transactions for which the Secretary has adopted standards under HIPAA; and

WHEREAS, upon review of the County's activities, the HIPAA privacy rules apply to certain county programs and functions, making the county a "covered entity," and

WHEREAS, the privacy rules allows a covered entity with both covered and non-covered programs and functions to designate itself a “hybrid entity,” resulting in the application of the privacy rules’ requirements to only “covered components” of the hybrid entity; and

WHEREAS, the County desires to designate itself a hybrid entity pursuant to the privacy rules and name the following departments as “health care components” of the county:

Human Resources Department  
County Auditor  
County Treasurer  
Information Technologies Department  
County EMS

WHEREAS, the County's employee group health plans are "covered entities" in their own right, separate and distinct from the County as plan sponsor; and

WHEREAS, in order to be permitted to receive protected health information from a group health plan, the privacy rules require the plan sponsor to amend the plan documents of the group health plan to establish the permitted and required uses and disclosures of protected health information by the plan sponsor; and

WHEREAS, the plan sponsor is required to provide the group health plan with written certification that such amendments have been made to the plan documents of the group health plan; and

WHEREAS, the County previously amended its group health plans in accordance with the HIPAA privacy rules and provided those plans with the necessary certification of such amendments; and

WHEREAS, the privacy rules require all covered entities to adopt certain policies and procedures regarding the privacy of protected health information; and

WHEREAS, a set of policies and procedures has been prepared for that purpose; and

WHEREAS, the privacy rules require a covered entity to designate a Privacy Official responsible for the development and implementation of the HIPAA privacy policies and procedures of the entity; and

WHEREAS, the privacy rules require a covered entity to designate a Contact Person responsible for receiving complaints about the entity's violation of the rules, and responsible for providing further information regarding any Notice of Privacy Practices required to be disseminated by the entity; and

WHEREAS, the County has previously designated the Health Plans Administrator and the Assistant to the Director of County EMS to serve as Privacy Officials and Contact Persons for the County.

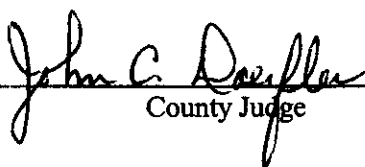
NOW THEREFORE, BE IT RESOLVED that the Williamson County Commissioners Court does hereby designate the County as a "hybrid entity" pursuant to 45 CFR §164.504.

BE IT FURTHER RESOLVED that the following programs and departments are designated "health care components" of the County pursuant to 45 CFR §164.504:

Human Resources Department  
County Auditor  
County Treasurer  
Information Technologies Department  
County EMS

BE IT FURTHER RESOLVED that the Commissioners Court does hereby adopt the attached policies and procedures pursuant to 45 CFR §164.530, to be applicable to all health care components of the County and to the County's employee group health plans, effective April 14, 2003.

DONE IN OPEN COURT this the 8<sup>TH</sup> day of April, 2003.

  
County Judge

\_\_\_\_\_  
Comm. Dist. #1

\_\_\_\_\_  
Comm. Dist. #3

\_\_\_\_\_  
Comm. Dist. #2

\_\_\_\_\_  
Comm. Dist. #4

## MEMORANDUM

April 4, 2003

TO: WILLIAMSON COUNTY COMMISSSIONERS COURT

FROM: COLE SPAINHOUR, ASSISTANT COUNTY ATTORNEY

RE: HIPAA PRIVACY COMPLIANCE MANUAL FOR TEXAS COUNTIES

## ISSUE PRESENTED:

You have asked me to review the document "HIPAA Privacy Compliance Manual for Texas Counties" and accompanying order prepared by John Dahill of the Conference of Urban Counties.

It is my opinion that the manual and order should be adopted by the Court. Compliance is required by April 14, 2003. Mr. Dahill and CUC have done an excellent job on the manual.

## DISCUSSION:

*History of HIPAA*

HIPAA is the federal Health Insurance Portability and Accountability Act of 1996. The part of the law that became effective in 1996 protects some employees from losing insurance coverage if they move from one job to another. The County is exempt from those provisions. A second part of the law becomes effective on April 14, 2003. That part allows the federal Department of Health and Human Services to enforce rules designed to protect the confidentiality of an individual's health information. Violation of the new HIPAA rules can lead to criminal prosecution and civil liability for the individual violator, the entity, and the entity's business associates. The key term is Personally Identifiable Health Information or "PHI" – medical information which can be traced back to an individual. These rules can be found in 45 Code of Federal Regulations Chapters 160 and 164.

There has been some panic in the health care industry that the new privacy provisions would require sound proof interview rooms for patients, separate consent forms for every procedure, prohibitions on spouses or relatives picking up prescriptions, etc. The Human Resources Department has been solicited by a number of firms making those doomsday predictions and asking large fees for consulting services. The problem is that the law says you cannot use or disclose PHI in a way that might harm an individual or violate their privacy rights, but the law gives very little concrete guidance on how to accomplish that goal. The County ultimately contracted with John Dahill, General Counsel for the

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Conference of Urban Counties to prepare a HIPAA Privacy Compliance Manual and train staff in its implementation.

### *The Manual*

The authors of the manual have taken a conservative and common sense approach to the new law and have considered statements made by the current administration on how the federal government will enforce it.

The policies and procedures section of the manual is divided into nine areas:

- (1) General privacy: The County will comply with the privacy regulations;
- (2) Administrative, Technical, and Physical Safeguards: The County will take reasonable steps to make sure that PHI is secure by using locked cabinets, blocking computer screens, limiting discussion of PHI in public areas, and requiring nondisclosure agreements for employees who handle PHI;
- (3) Administrative Requirements: The County will designate a Privacy Official, conduct necessary training, give privacy notices to employees, document HIPAA activities, and refrain from retaliation against employees for exercising their rights under HIPAA. The County will not require a waiver of HIPAA rights.
- (4) Individual Rights Regarding PHI: Statement of individual rights under HIPAA. This includes right to restrict use of PHI, right to access their own PHI, right to amend incorrect PHI, right to an accounting of PHI use and disclosure, and right to file complaints regarding PHI use. Provides timelines for responding to these requests. ***The bold step that CUC has made in this section is that routine use of PHI for treatment, payment, or health care operations is excluded from these provisions. This interpretation has been supported by the Administration and will limit the administrative burden imposed by HIPAA implementation. Only use of PHI outside of these three categories will trigger HIPAA requirements.***
- (5) Uses and Disclosures of an Individual's PHI: Detailed rules on when and how the County can use or disclose PHI including statutory exceptions for reporting crimes, government oversight, subpoena requests/court orders, government required reporting, medical examiners, funeral directors, organ banks, research, mental commitments, national security, jail inmates, emergency treatment, and public health programs.

- (6) Minimum necessary information: Statement that use and disclosure of PHI will be on a "minimum necessary" (a.k.a. "need to know") basis. County will designate PHI that is used or disclosed on a routine basis versus PHI that is not used or disclosed on a routine basis and follow appropriate procedures in each case.
- (7) Business Associates: Outlines contracts that will be made with any business associates of the County in PHI sharing. These agreements are intended to shield the County from liability for misuse of PHI by business associates.
- (8) Enforcement, Sanctions, and Penalties for Violations of Privacy Policies: Employees who violate privacy policies will be appropriately disciplined. Notice that violation of HIPAA can lead to criminal prosecution and civil liability for the individual as well as the County.
- (9) De-identification of PHI and Use of Limited Data Sheets: Standards for use of health information and statistics which have been "de-identified" and cannot be traced back to individuals.
- (10) The Manual also contains forms and a general Frequently Asked Questions section.

*Order by the Commissioners Court*

The key issue in the Order to be adopted by the Commissioners Court is that the County is designated as a "hybrid entity" and only certain departments are covered by the HIPAA privacy policies: Human Resources; County Auditor; County Treasurer; Information Technologies Department; and County EMS. An individual who felt that their HIPAA rights have been violated could try to bring a complaint against another department. For example, a supervisor requires an employee to bring in a detailed letter from a doctor complete with a diagnosis simply to explain an absence and then the supervisor posts the letter on the break room wall. The old adage that all it takes to sue someone is a filing fee still applies. It is proper that the policy is limited to those departments directly involved in the use of PHI, but all departments and department heads should be cautioned against unnecessary curiosity regarding an employee's health information and use or disclosure of any PHI which they may possess.

The immediate impact of the new policies will be the required training and distribution of the privacy notices to all employees. The long term impact and increased workload could be slight to severe depending on how many employees choose to invoke their HIPAA rights and whether any lawsuits are filed against the County.

**AGENDA ITEM 23**

Discuss and take appropriate action concerning adding a new employee for the Sheriffs Department - Bond Division.

Moved: **Commissioner Heiligenstein**

Seconded: **Commissioner Limmer**

Motion: To approve adding a new employee for the Sheriffs Department - Bond Division.

Vote: **4 – 1. Commissioner Boatright opposed.**

**AGENDA ITEM 24**

Discuss and take appropriate action on funding a new building for the Justice of the Peace Pct. 4 out of Tax Anticipation Notes already issued.

Moved: **Judge Doerfler**

Seconded: **Commissioner Limmer**

Motion: To approve the transfer of \$500,000 out of the Tax Anticipation Notes interest to fund the new Justice of the Peace Pct. 4 building and return \$260,000 into the general fund when the current building sells.

Vote: **4 – 1. Commissioner Heiligenstein opposed.**

**AGENDA ITEM 25**

Discuss and take appropriate action on the County's action plan for inclement weather concerning notification of employees and the public.

Moved: **Commissioner Boatright**

Seconded: **Commissioner Hays**

Motion: To authorize Judge Doerfler to declare the County open or closed for business during inclement weather and for him to notify the media.

Vote: **5 - 0**

**AGENDA ITEM 26**

Consider approving Change Order No. 2 for CR 412 in the amount of \$44,286.80 by R.G.M. Constructors, L.P.

Moved: **Commissioner Limmer**

Seconded: **Judge Doerfler**

Motion: To approve Change Order No. 2 for CR 412 in the amount of \$44,286.80 by R.G.M. Constructors, L.P.

Vote: **4 – 0. Commissioner Heiligenstein was absent from the dais.**

< Attachment >