

Date: February 1, 2024

To: JLMBC

From: Staff

Subject: **Health Insurance Portability and Accountability Act (HIPAA) Compliance Officer**

JLMBC MEMBERS:

Management

Dana Brown, Chairperson
Tony Royster, First Prov. Chairperson
Matthew Rudnick
Matthew Szabo
Holly Wolcott

Employee Organizations

Jenita Igwealor, Vice-Chairperson
Marleen Fonseca, Second Prov. Chairperson
Chad Boggio
Esteban Lizardo
Lisa Palombi

RECOMMENDATION

That the JLMBC approve the necessary funding from the Employee Benefits Trust Fund (Fund 899) for a Senior Benefits Analyst I position to be added as a regular position authority to serve the LAwell Program as its HIPAA Compliance Officer.

DISCUSSION

The JLMBC has been engaged in multiple discussions about further exploration of a self-insured insurance model for its Dental and Vision insurance benefits. This report provides information and a recommendation on the next step to further that conversation.

A. Background

At its July 6, 2023 meeting, the JLMBC received Report 23-29 in which staff discussed Health Insurance Portability and Accountability Act (HIPAA) compliance mandates that would be required if the LAwell Plan moves to a self-insured insurance. Staff cited a need for physical office changes and a new position authority that would serve as a HIPAA Compliance Officer. The JLMBC asked staff to report back on how much these changes would cost. This report responds to this request.

At its November 2, 2023 meeting, staff reported back to the JLMBC via Committee Report 23-42 (Attachment 1) regarding the estimated costs for moving forward with a self-insurance insurance option for dental and vision benefits. In addition to estimated costs for office and system improvements, the report identified the cost for a brand new Senior Benefits Analyst I (Class Code 9109-1) position authority to be added to serve as the HIPAA Compliance Officer. This classification was identified as the best suited position addition to perform HIPAA Compliance Officer duties and facilitate the effort to move towards self-insured insurance options of dental and vision, or Administrative Services Only (ASO). Although Committee Report 23-42 was an informational report, the JLMBC asked staff to return to the JLMBC regarding the matter at a later date.

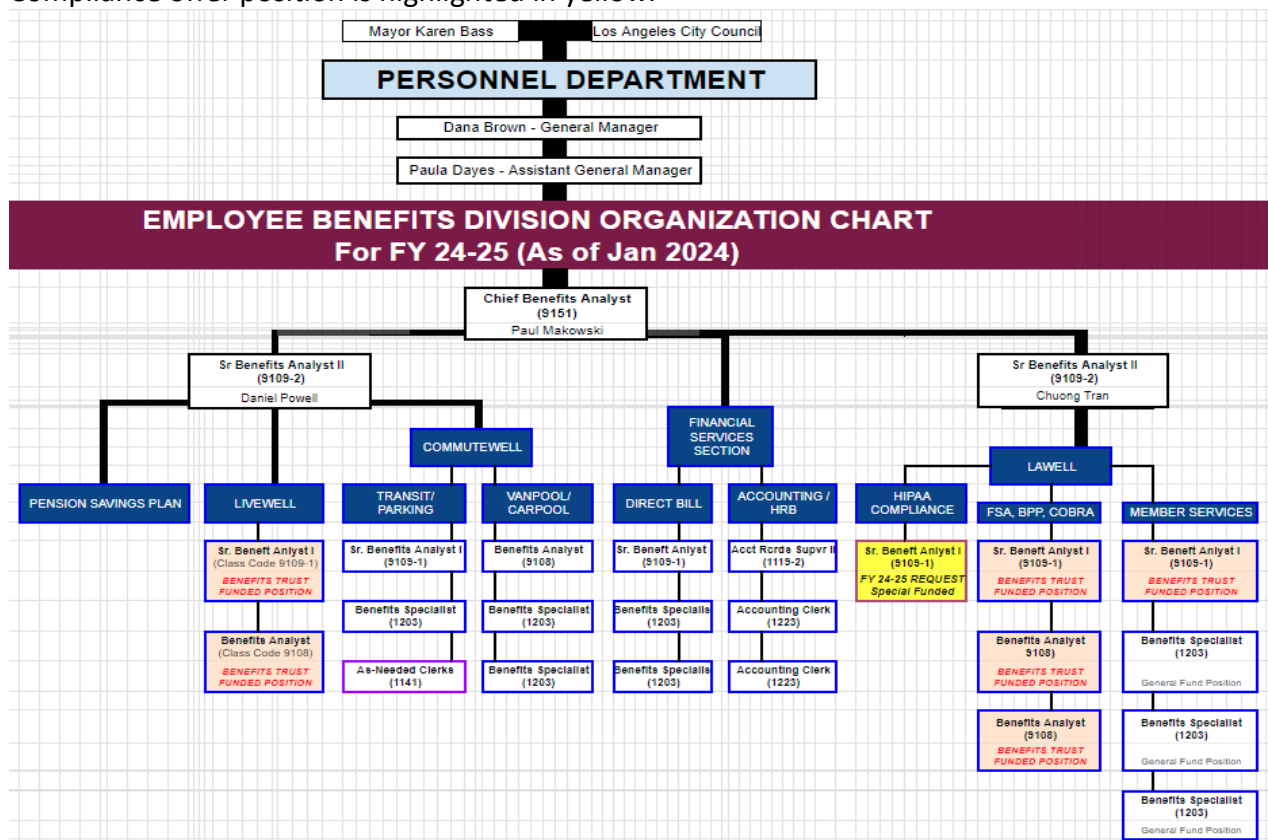
B. HIPAA Compliance Officer Position Authority

As part of the Personnel Department's budget request package for FY 2024-25 (<https://mayor.lacity.gov/budget-resources>), a new position authority request for a Senior

Benefits Analyst was included for the Health Insurance Portability and Accountability Act (HIPAA) Compliance Officer role. In this request, the position was identified as being funded from the General Fund as a regular position authority, but the request identified a possible option for special funding through the Employee Benefits Trust Fund (Fund 899), pending approval by the JLMBC.

On January 19, 2024, the Office of the City Administrative Officer (CAO) released a report regarding Fiscal Concerns and Prioritization of Critical Hiring ([Council File 23-0600-S115](#)). In that report, the CAO recommends that the City immediately implement a hiring freeze for the remainder of FY 2023-24, and eliminate all non-critical vacant positions for FY 2024-25. In addition, the report outlines a critical hiring review process for requests to hire critical positions. The report provides a list of categories that the CAO would use, in conjunction with the Office of the Mayor and the Office of the City Legislative Analyst to determine hiring requests, or “unfreezes.” Included in this categories list are positions that must be filled to address a legal mandate and positions fully paid for by special funds that are not subsidized by the General Fund.

Given this new report and recommendation from CAO, the future ability to proceed with adding a new position authority through the FY 2024-25 budget process is at risk. The best action to counter that risk is within the control of the JLMBC is to identify the position as special funded by Fund 899. Funding positions from Fund 899 has a strong precedent. 100% of the non-upper management positions supporting the LIVEwell Program (two out of two positions), and 57% of the non-upper management positions supporting the LAwell Program (four out of seven positions) are funded by Fund 899. In the Employee Benefits Division organization chart below, the positions currently funded by Fund 899 are highlighted in peach. The new proposed HIPAA Compliance offer position is highlighted in yellow.



Should the JLMBC approve funding the new HIPAA Compliance Officer position via Fund 899, the Personnel Department will be prepared to include that action in its discussion with the CAO and the Office of the Mayor to retain that new position request for FY 2024-25. If the JLMBC does not approve funding this position from Fund 899, the Personnel Department still plans to continue with its existing budget proposal for the addition of the new HIPAA Compliance Officer position.

Submitted by:

Chuong Tran, Senior Benefits Analyst II

Approved by:

Paul Makowski, Chief Benefits Analyst

Date: November 2, 2023

To: JLMBC

From: Staff

Subject: **Self-Funded Dental/Vision Administration Estimate**

JLMBC MEMBERS:

Employee Organizations

David Sanders, Vice-Chairperson

Marleen Fonseca, First Prov. Chairperson

Chad Boggio

Esteban Lizardo

Lisa Palombi

Management

Dana Brown, Vice-Chairperson

Tony Royster, Second Prov. Chairperson

Matthew Rudnick

Matthew Szabo

Holly Wolcott

RECOMMENDATION

That the JLMBC receive and note this report back regarding the estimated costs for moving to a self-funded Administrative Services Only (ASO) option for its dental and or vision services.

DISCUSSION

A. Background

After selecting a fully-insured dental plan carrier as a result of a Request For Proposals, at its May 18, 2023 meeting, the JLMBC engaged in dialog with its consultant, Keenan and Associates, regarding the possibility of changing from a fully-insured insurance plan to a self-funded insurance plan. Under a self-funded insurance plan, an employer is fiscally responsible for paying dental claims and contract with the dental insurance carrier to provide Administrative Services Only (ASO). The JLMBC asked for staff to report back on its position regarding the ASO concept.

At its July 6, 2023 meeting, the JLMBC received [Report 23-29](#) (Attachment 1) in which staff discussed Health Insurance Portability and Accountability Act (HIPAA) compliance mandates which would be required if the LAwell Plan moves to a self-insured insurance. Staff cited a need for physical office changes and a new position authority who would serve as a HIPAA Compliance Officer. The JLMBC asked for staff to report back on how much these changes would cost. This report responds to this request on cost.

B. Estimated Staffing and Office Changes

As previously reported, staff believes that if there was a desire to proceed with a self-funded plan option, the City would need a change through Council Action to adopt a new resolution of its hybrid HIPAA designation and identify the Employee Benefits Division (EBD) as a Covered Entity for its dental and/or vision insurance plans. Under HIPAA rules, Covered Entities are (1) health plans, (2) health care clearinghouses, and (3) health care providers who electronically transmit any health information in connection with transactions for which HHS has adopted standards. Adoption of a new resolution would be a purely procedural action by the Office of the City Attorney and would only require staff time involved with making the change.

Before the resolution change, the following changes would need to occur within the EBD, with the below paragraphs in *italics copied from Report 23-29* and the cost estimate provided in response.

-HIPAA Compliance Officer: To comply with HIPAA and the responsibilities of a Covered Entity, a HIPAA Compliance Officer is required to be designated. A HIPAA Compliance Officer is the individual responsible for implementing privacy policies and ensuring the security of protected health information (PHI). The HIPAA Compliance Officer is also responsible for developing the organization's policies and procedures per HIPAA regulations. As the HIPAA Compliance Officer is intended to be an expert of HIPAA regulations, it would also be the responsibility of the HIPAA Compliance Officer to attend regular and routine training to stay informed of changes to regulations. In addition, it would be the responsibility of the HIPAA Compliance Officer to ensure that all staff are subsequently trained and in compliance with HIPAA.

Staff believes a Sr Benefits Analyst I (Class Code 9109-1) classification is best suited for this duty, which would require a strong grasp of health care fundamentals and experience in EBD contracts as well as policy and legislative development. A Senior Benefits Analyst classification direct salary costs range from \$103,314.24 to \$151,087.68 a year. Indirect costs through the City's Cost Allocation Plan (CAP) are currently using the rate of 80.18% for EBD, or roughly an additional \$82,837 to \$121,142 a year.

For budgeting purposes the median salary (step 7 @ 128,391.12) inclusive of direct and indirect costs would be approximately \$231,335 a year as a permanent, recurring expense.

-Physical Office Changes: HIPAA requires, among other things, the safe protection of PHI. Typically, this may require separations of duties and actions within an office that performs a mixture of HIPAA-applicable work. To comply with HIPAA privacy, physical changes to the EBD office may be needed to section off the areas and locations where PHI is reviewed and stored. The decision of such office changes should be led by the designated HIPAA compliance officer, but may include physical changes to cubicle/desk design and the purchase of additional equipment, such as secure locking cabinets and private/non-shared scanner, printer, etc.

Staff has researched and reviewed multiple office change options. Ultimately, the decision to make HIPAA Compliant office changes should be made by the HIPAA Compliance Officer after that individual has completed sufficient training and obtained adequate knowledge. However, in reviewing options, staff understands that cubicle modifications and structural office changes to create secure locations where PHI can be reviewed and stored will take sufficient time and labor costs with City resources and outside vendors. The needs could be as little as making changes to one cubicle or could involve changes to a larger section of cubicles, which may involve moving multiple staff around.

Based on the wide range of possibilities and quotes/estimates reviewed so far, staff believes that a realistic estimate of physical office changes could be anywhere from \$2,000 for a few very small changes to one existing cubicle to cover addition of privacy screens and

additional/improvements to locking cabinets to approximately \$90,000 for the rebuilding of a group of four cubicles with substantial privacy items and with lockable infrastructure.

Ancillary, the EBD intends to grow in size and potentially may grow in function as benefits for employees change over the years and additional responsibilities and/or needs are added to current day services. There may be some benefit to redesigning the entire EBD office to modernize its infrastructure and build better options for the future. In this manner the EBD could rearrange cubicle use and purpose to better meet the needs of a hybrid/desk sharing module while opening up more space for meeting spaces and confidential, HIPAA compliant work, inclusive of private counseling rooms/cubicles and sufficient secure infrastructure. EBD is working to identify the scale of what this cost would be, but based on complete office redesigns done in other offices and smaller scale estimates expanded to cover the entire office, the cost in current pricing could be between \$300,000 and \$600,000.

For budgeting purposes the median cost of \$450,000 is recommended as a one-time expense.

-Virtual system/structure changes: In addition to physical changes, cybersecurity practices and services currently used by the EBD would likely need to be changed. The EBD may need to purchase a special secure email service and/or separate secure servers to properly transmit and store PHI.

Staff is still researching and discussing with IT what options are available to best suit the needs. Through discussions, staff believes - subject to confirmation by the HIPAA Compliance Officer - that existing IT infrastructure is sufficient to securely house PHI data. However, staff and IT are still discussing how to transmit data and what encryption options are available. Should no existing City option be made available to the EBD at no cost, or if the EBD HIPAA Compliance Officer believes that it may be best to make an independent purchase of an email encryption service, currently this can range between \$20- \$40 a month.

For budgeting purposes, the cost of \$480 is recommended as a recurring subscription cost.

C. Conclusion

The estimated costs to provide sufficient staffing and infrastructure for a self-funded plan option are obtainable. However, taking on the additional risk and responsibility of moving to a self-funded model would still require substantial planning..

Submitted by:

Chuong Tran, Senior Benefits Analyst II

Submitted by:

Paul Makowski, Chief Benefits Analyst

Date: July 6, 2023

To: JLMBC

From: Staff

Subject: **Self-Funded Insurance Plans with an Administrative Services Only (ASO) Option**

JLMBC MEMBERS:

Employee Organizations

David Sanders, Chairperson

Marleen Fonseca, First Prov. Chairperson

Chad Boggio

Gary Glaze

Esteban Lizardo

Management

Dana Brown, Vice-Chairperson

Tony Royster, Second Prov. Chairperson

Matthew Rudnick

Matthew Szabo

Holly Wolcott

RECOMMENDATION

That the JLMBC receive and file the staff report on ASO.

DISCUSSION

At its May 18, 2023 meeting, the JLMBC engaged in dialog with its consultant, Keenan and Associates, regarding the possibility of changing from a fully-insured insurance plan to self-funded insurance plan option for its dental plan whereby the City would contract with the dental insurance carrier to provide ASO. The JLMBC asked for staff to report back on its position regarding the ASO concept. This report serves to highlight staff's understanding of the potential increased risks associated with switching to a self-funded insurance model and the concerns that staff is reviewing and assessing with any potential change.

A. BACKGROUND

The LAwell Program has historically contracted with fully-insured providers for its medical, dental, and vision coverages. A fully-insured provider is an insurance carrier which offers an insurance product for purchase, and the insurance carrier is fully responsible in complying with all state and federal regulations. Under this model, the LAwell Program obtains coverage from insurance providers on behalf of its covered employees by paying a monthly insurance premium. When an insurance product is fully-insured, the provider of the insurance takes on all financial and regulatory risk associated with offering and administering the insurance plan. Thereby, in the course of its day-to-day business, the fully-insured insurance provider receives certain protected health information with respect to the administration of benefits such as insurance claims, which detail the specific type of health procedure and/or health diagnosis or condition for which a covered individual sought treatment. The Insurance provider then performs administrative functions to determine if a claim is payable under the health

plan and, if approved, transmits payment for the claim to the service provider. More specifically, this typical work includes:

- Adjudicating Claims between the health care provider and health plan/insurer
- Administering an appeal review process for denied claims, which may include an independent medical review by the Department of Managed Health Care.
- Resolving Centers for Medicaid and Medicare Services (CMS) debt notices (for when Medicare is the secondary insurance plan but pays for care as the primary)

Because of these activities, the insurance provider is deemed a “covered entity” under the Health Insurance Portability and Accountability Act (HIPAA). Accordingly, the insurance provider, as a covered entity, must establish certain procedures to guard protected health information such as:

- Data control and safety (Ensure measures are in place to conform with HIPAA for protection of Protected Health Information, or PHI.)
- Data/Security Breach Compliance/Notification

Since the LAwell Program has continued to provide fully-insured insurance plans for its medical, dental, and vision plans, all of the above items have been the responsibility of the insurance carrier to provide and maintain full compliance under HIPAA and any other related legislation.

B. WHO IS A COVERED ENTITY?

Per the United States Department of Health and Human Services (HHS), and pursuant to [45 C.F.R. § 160.103](#), a Covered Entity is:

A health plan. An individual or group plan that provides, or pays the cost of, medical care. Health plans include private entities (e.g., health insurers and managed care organizations) and government organizations (e.g., Medicaid, Medicare, and the Veterans Health Administration)

A health care provider. A provider of health care services and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. Health care providers (e.g., physicians, hospitals, and clinics) are covered entities if they transmit health information in electronic form in connection with a transaction for which a HIPAA standard has been adopted by HHS. (e.g., billing)

A health care clearinghouse. A public or private entity, including a billing service, repricing company, or community health information system, that processes non-standard data or transactions received from another entity into standard transactions or data elements, or vice versa.

In general, the HHS has identified that any organization or individual which meets one or more of the categories above and either receives or transmits PHI and/or furnishes, bills, or receives payment for health care in the normal course of business is a covered entity.

A Covered Entity is one of the following:

A Health Care Provider	A Health Plan	A Health Care Clearinghouse
<p>This includes providers such as:</p> <ul style="list-style-type: none"> • Doctors • Clinics • Psychologists • Dentists • Chiropractors • Nursing Homes • Pharmacies <p>...but only if they transmit any information in an electronic form in connection with a transaction for which HHS has adopted a standard.</p>	<p>This includes:</p> <ul style="list-style-type: none"> • Health insurance companies • HMOs • Company health plans • Government programs that pay for health care, such as Medicare, Medicaid, and the military and veterans health care programs 	<p>This includes entities that process nonstandard health information they receive from another entity into a standard (i.e., standard electronic format or data content), or vice versa.</p>

<https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html>

C. CITY OF LOS ANGELES AS A COVERED ENTITY

Presently, the City has designated itself as a hybrid Covered Entity under HIPAA. This hybrid designation is a self-designation that the City last adopted through Council File #18-0419 (**Attachment A**), and serves to clarify roles and duties of the City and thereby limit the overall risk of the City for complying with or potentially violating HIPAA. Through this self-designation, the City has identified that only a certain number of working divisions/sections within specific departments meet the definition of a Covered Entity, as defined above by the US Department of Health and Human Services, and are thereby designated as a Covered Entity instead of designating the entire City. As noted in Council File 18-0419, the Employee Benefits Division (EBD) is not currently identified as a Covered Entity under the City’s hybrid designation for its medical, dental, and vision insurance as, to date, the EBD has only purchased fully-insured coverages.

D. SELF-FUNDED PLANS

A self-insured group health plan is one in which an employer assumes the risks (financial and regulatory) for providing healthcare benefits to its employees as opposed to purchasing a “fully-insured” plan from an insurance carrier. Under a Self-funded arrangement, the City can gain a large amount of control into the financial spending of the plan. Along with this control, the City can position itself into a better position to control insurance premium changes each year as it will gain control over the underwriting of the insurance. However, as it is understood by staff and the Office of the City Attorney, the City would also be named the Covered Entity for those Self-funded insurance plans and

be responsible for complying with the privacy rules and other rules and requirements of HIPAA. The City may enter into contractual agreements, known as Business Associates Agreements (BAA), where many of these responsibilities can be passed to another company, but not all risk and responsibility is deferred.

E. VISION AND DENTAL ASO APPLICATION

As represented by its consultant, Keenan, the option to self-fund its vision and dental insurance plans are identified as low risk options to pursue financially. This has been identified mainly due to the general cost of the typical vision and dental claim value. As identified by Keenan, the need to pay out a very high dollar claim related to vision or dental services is very low, and the risk of incurring a high cost claim which would put a large strain on financial reserves is very low. Thereby, Keenan identifies that the need to hold enough cash on hand to handle any potential claim should result in net savings to the City compared to the overall amount of its current premium payments under a fully-insured model.

However, staff's understanding of a change to self-funding would also change its position under HIPAA and define it as a Covered Entity for those self-funded plans. Although the Personnel Department would enter into a BAA with the insurance carrier for it to carry out the majority of day-to-day administrative services required of a Covered Entity, it is staff's understanding that certain occurrences may arise where the City would need to step in and perform administration, or approve specific situations which would require the City to review and exchange PHI. Staff is still reviewing and trying to best understand how to mitigate the other regulatory compliance risks that come with switching to a self-funded, aka Covered Entity, structure. The concerns that staff is continuing to explore include, but are not limited to:

- Data Breach Compliance. Staff has seen first-hand an increase in data breach occurrences, including data breach occurrences among its current contracted providers, in the past few years. Although contractual language already exists in existing provider contracts, any change of the City to move the EBD to a Covered Entity status would perceivably change the level of responsibility under HIPAA to issue a notice of data breach and to offer credit monitoring or other services to impacted members. Through the arrangement proposed by Keenan, the carrier would be primarily responsible for data breach notification compliance under HIPAA as it holds all the PHI data. Although, as noted in this report, there is a perceived need for the City to receive PHI in limited situations and potential open risk or need to comply with data breach compliance if it occurs in certain situations. It is currently unclear what contractual changes would be needed and/or what additional risk the City would incur should a security/data breach occur when the City is identified as a Covered Entity and holds a BAA. However, a great deal of consideration should be placed into what language is included in a BAA and what measures are taken to reduce exposure and weaknesses in systems and through points of data exchange.
- Claim Adjudication. Under a typical claim process, claims with very specific PHI are reviewed for approval or denial of payment. In the event of claim denial, a process for a member to appeal the denial is established. Under a fully-insured product, the insurance company handles the appeal process completely through an established process of internal review. In some cases, the Department of Managed Health Care (DMHC) may also be involved in a review of an appeal

for denied services, to which they call a complaint and/or request for independent medical review, and the insurance company would need to work with the DMHC on resolution. Under a self-funded plan, the City may be required or needed to step into a denial review. It is currently unclear at what level and under what circumstances the City would be required to review and determine claim denial appeals and what exposure/requirement the City would have in a complaint or independent medical review administered by the State of California.

- Legal Disputes. Through a fully-insured product, the insurance carrier is primarily responsible for settling legal claims regarding the provision of services and benefits received under the plan. This would include any legal dispute around the payment of claims, the rendering of services, the access to providers, etc. Under a self-funded plan, the City may likely outline specifics in its Business Associates Agreement for the handling of legal disputes to be the primary responsibility of the administrator service, but the City may still be exposed to increased risk in settling legal disputes or may be required to participate in legal disputes regarding the plan. It is currently unclear to what extent of additional exposure to risk would result

In addition to the concerns noted above, if there was a desire to proceed with a self-funded plan option, the City would need a change in Council Action to adopt a new resolution of its hybrid HIPAA designation and identify the EBD as a Covered Entity for its dental and/or vision insurance plans. Additionally, the following changes to EBD would need to occur:

- *HIPAA Compliance Officer*: To comply with HIPAA and the responsibilities of a Covered Entity, a HIPAA Compliance Officer is required to be designated. A HIPAA Compliance Officer is the individual responsible for implementing privacy policies and ensuring the security of protected health information (PHI). The HIPAA Compliance Officer is also responsible for developing the organization's policies and procedures per HIPAA regulations. As the HIPAA Compliance Officer is intended to be an expert of HIPAA regulations, it would also be the responsibility of the HIPAA Compliance Officer to attend regular and routine training to stay informed of changes to regulations. In addition, it would be the responsibility of the HIPAA Compliance Officer to ensure that all staff are subsequently trained and in compliance with HIPAA.
- *Physical Office Changes*: HIPAA requires, among other things, the safe protection of PHI. Typically, this may require separations of duties and actions within an office that performs a mixture of HIPAA-applicable work. To comply with HIPAA privacy, physical changes to the EBD office may be needed to section off the areas and locations where PHI is reviewed and stored. The decision of such office changes should be led by the designated HIPAA compliance officer, but may include physical changes to cubicle/desk design and the purchase of additional equipment, such as secure locking cabinets and private/non-shared scanner, printer, etc.
- *Virtual system/structure changes*: In addition to physical changes, cybersecurity practices and services currently used by the EBD would likely also need to be changed. The EBD may need to purchase a special secure email service and/or separate secure servers to properly transmit and store PHI.

F. Next Steps

As with any service provided under the LAwell Program, any decision and the necessary steps to move forward should be determined by how to best handle and mitigate risk. The LAwell Program should only proceed with a change to its dental and/or vision plans when it has fully determined a path forward that fully identifies how to address and mitigate any increase or change in risk incurred by switching to a self-funded insurance plan option.

Staff believes the best way to proceed is for staff and its legal counsel to continue to evaluate its concerns of increased and shifted risk with switching to a self-funded insurance plan. When staff identifies a plan to sufficiently address the increased risk of a self-funded model, it would also need to identify a plan to address the other changes to EBD. Based on current staffing levels and workloads, it is likely that the EBD may need to have a new position authority added to perform the HIPAA Compliance Officer work. Such a staffing change may likely only be accomplished through the City's budget process.

Submitted by: _____
Paul Makowski, Chief Benefits Analyst

RESOLUTION

WHEREAS, the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and various implementing regulations impose certain new requirements regarding the confidentiality of health information;

WHEREAS, the City of Los Angeles has already been designated as a “covered entity” under HIPAA and the federal regulations;

WHEREAS, the City of Los Angeles has already designated its components that perform HIPAA-covered functions;

WHEREAS, a HIPAA designation is required under 45 CFR Sections 164.105, 164.316(a) and 164.530(i); and

WHEREAS, the City of Los Angeles reserved the right to modify those designations as needed to comply with the requirements of the HIPAA regulations.

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Los Angeles hereby designates the Mayor’s Office as a “health care component” for purposes of HIPAA and various implementing regulations; and in accordance with 45 C.F.R. 164.105(a)(2)(iii)(D), the following health care components are hereby designated and modified as “health care components” of the hybrid entity - the City of Los Angeles:

- a) The Los Angeles Fire Department;
- b) Correctional Care Services of the Medical Services Division of the Personnel Department;
- c) Information Technology Agency;
- d) Records Management Division of the Office of the City Clerk;
- e) Medical Services Office of the Employment Services Division of the Department of Water and Power;
- f) The Controller’s Office, Financial Operations and Auditing Divisions; and
- g) The Mayor’s Office.

BE IT FURTHER RESOLVED, that the Council of the City of Los Angeles reserves the right to amend the above stated designation and/or HIPAA Policy to include additional components and to make exceptions to, modify or eliminate the designation or policy(ies) as required under the HIPAA regulations.