

COUNCIL OF THE COUNTY OF MAUI

# POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

July 7, 2015

**Committee  
Report No.** \_\_\_\_\_

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on June 16, 2015, makes reference to County Communication 14-163, from the Director of Finance, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND, STATE OF HAWAII". The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"), attaching a confidentiality agreement to allow the County to receive monthly reports containing information the EUTF views as protected by the Health Insurance Portability and Accountability Act ("HIPAA").

Your Committee notes the Council's Policy and Intergovernmental Committee (2013-2015 Council term) met on this matter on September 29, 2014, and December 8, 2014.

Your Committee further notes Section 2.20.020, Maui County Code, states unless authorized by ordinance, the Mayor cannot enter into an intergovernmental agreement that places a financial obligation on the County. Your Committee further notes the Administration anticipates the EUTF will charge \$1,000 to provide the monthly reports for the first year after the enactment of the proposed ordinance.

The Department of the Corporation Counsel transmitted a revised proposed bill, approved as to form and legality, incorporating corrections,

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**POLICY AND INTERGOVERNMENTAL**  
**AFFAIRS COMMITTEE**

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clarifications, and nonsubstantive revisions to the agreement, as requested by your Committee Chair.

A representative from the Department of Finance stated the EUTF stopped transmitting monthly reports in 2012 and will not resume transmitting reports until the County enters into an intergovernmental confidentiality agreement to satisfy the requirements of HIPAA and the Health Information Technology for Economic and Clinical Health Act ("HITEC").

Your Committee notes HIPAA established the Privacy Rule to protect individuals' medical records and other personal health information, and established the Security Rule by setting standards for the security of electronic personal health information. Your Committee further notes HITEC sets additional standards, including penalties for violations.

The representative stated the monthly EUTF reports are necessary to verify the accuracy of the County's monthly benefit payments.

Your Committee voted 8-0 to recommend passage of the further revised proposed bill on first reading and filing of the communication. Committee Chair Victorino, Vice-Chair Couch, and members Carroll, Cochran, Crivello, Guzman, Hokama, and White voted "aye". Committee member Baisa was excused.

Your Committee is in receipt of a further revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions recommended by your Committee.

Your Policy and Intergovernmental Affairs Committee  
RECOMMENDS the following:


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1. That Bill \_\_\_\_\_ (2015), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND, STATE OF HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 14-163 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



\_\_\_\_\_  
MICHAEL P. VICTORINO, Chair

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2015)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE  
COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL  
AGREEMENT WITH THE HAWAII EMPLOYER-UNION HEALTH  
BENEFITS TRUST FUND, STATE OF HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:


SECTION 1. Purpose. The Hawai'i Employer-Union Health Benefits Trust Fund, State of Hawaii ("EUTF") requires the County of Maui ("County") to enter into a Confidentiality Agreement, attached hereto as Exhibit "1" ("Agreement"), to continue to receive monthly reports that contain information that EUTF views as protected by the Health Insurance Portability and Accountability Act of 1996. The Department of Finance has reviewed the Agreement and agrees with the terms and conditions therein.

Section 2.20.020, Maui County Code ("MCC"), provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Authorization. The Council hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY DEOKA  
Deputy Corporation Counsel  
County of Maui

## CONFIDENTIALITY AGREEMENT

This Agreement, is effective as of \_\_\_\_\_, 2014, between the Hawai'i Employer-Union Health Benefits Trust Fund, State of Hawai'i (hereinafter the "STATE"), by its Administrator, whose address is 201 Merchant Street, Suite 1520, Honolulu, Hawai'i 96813, and the County of Maui, whose address is 200 South High Street, Wailuku, Hawai'i 96793 (hereinafter "COUNTY ENTITY").

### RECITALS

A. COUNTY ENTITY wishes to obtain protected health information or electronic protected health information for its employees for the purpose of verifying employees' information in COUNTY ENTITY's files, such as enrollment in health and life insurance plans.

B. Both parties are committed to complying with the privacy and security laws with respect to Protected Health Information, Electronic Protected Health Information, and Personal Information.

C. This Agreement sets forth the terms and conditions pursuant to which the following will be handled: (1) Protected Health Information and Electronic Protected Health Information that is disclosed to or used by COUNTY ENTITY; and (2) Personal Information provided to COUNTY ENTITY.

### TERMS AND CONDITIONS

1. Introduction: The STATE, as defined in this Agreement, has determined that it is a Covered Entity under HIPAA (defined below) and the Privacy and Security Rules (defined below). In addition, the STATE is subject to use and disclosure restrictions regarding Personal Information under Act 10 (defined below) and Chapters 487N and 487R, Hawai'i Revised Statutes.

The parties acknowledge that entry into this Agreement is necessary and desirable in order to protect the privacy and security of Protected Health Information and Electronic Protected Health Information in accordance with the Privacy and Security Laws and to ensure authorized use and disclosure of Personal Information that COUNTY ENTITY has been provided.

2. Definitions:
  - a. Act 10. "Act 10" shall mean Act 10, 2008 Session Laws of Hawai'i, Special Session.
  - b. Agreement. "Agreement" shall mean this agreement between STATE and COUNTY ENTITY.
  - c. ARRA. "ARRA" shall mean the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and the rules and regulations promulgated under the ARRA.
  - d. Breach. "Breach" shall have the meaning set forth in the ARRA.

- e. Electronic Protected Health Information. “Electronic Protected Health Information” shall have the meaning set forth in 45 C.F.R. § 160.103. For purposes of this Agreement, “Electronic Protected Health Information” is limited to Electronic Protected Health Information that is: (i) disclosed to or used by COUNTY ENTITY and/or (ii) created, received, maintained, or transmitted by COUNTY ENTITY on behalf of the STATE.
- f. Electronic Transactions Rule. “Electronic Transactions Rule” shall mean the final rule set forth in 45 C.F.R. §§ 160 and 162.
- g. HIPAA. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- h. Individual. “Individual” means the person who is the subject of Protected Health Information, and shall include a person who qualifies as a personal representative under 45 C.F.R. § 164.502(g).
- i. Individually Identifiable Health Information. “Individually Identifiable Health Information” shall have the meaning set forth in 45 C.F.R. § 160.103.
- j. Personal Information. “Personal Information” shall have the meaning set forth in Section 487N-1, Hawai‘i Revised Statutes. For purposes of this Agreement, “Personal Information” is limited to Personal Information provided to COUNTY ENTITY.
- k. Plan Administration Functions. “Plan Administration Functions” means administration functions performed by the COUNTY ENTITY on behalf of the STATE.
- l. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as the same may be amended from time to time.
- m. Privacy and Security Laws. “Privacy and Security Laws” shall include: (1) the provisions of HIPAA that relate to the privacy and security of Protected Health Information and Electronic Protected Health Information; (2) the Privacy and Security Rules; (3) the provisions of ARRA, including the rules and regulations promulgated under the ARRA, that relate to the privacy and security of Protected Health Information and Electronic Protected Health Information; (4) Act 10 and, to the extent applicable, Chapters 487N and 487R, Hawai‘i Revised Statutes; and (5) other Federal and State privacy or security statutes and regulations that apply to Protected Health Information, Electronic Protected Health Information, or Personal Information.
- n. Protected Health Information. “Protected Health Information” shall have the meaning set forth in 45 C.F.R. § 160.103. For purposes of this Agreement, “Protected Health Information” is limited to Protected Health Information that is: (i) disclosed to or used by COUNTY ENTITY and/or (ii) created, received, maintained, or transmitted by COUNTY ENTITY on behalf of the STATE.
- o. Secretary. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or designee.

- p. Security Rule. "Security Rule" shall mean the Health Insurance Reform: Security Standards at 45 C.F.R. Part 160, Part 162, and Part 164, Subparts A and C, as the same may be amended from time to time.
  - q. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the meaning set forth in the ARRA.
3. Obligations and Activities of COUNTY ENTITY:
- a. COUNTY ENTITY agrees to use the Protected Health Information solely for the purpose of performing Plan Administration Functions.
  - b. COUNTY ENTITY agrees to not use or disclose Protected Health Information, Electronic Protected Health Information, and Personal Information other than as permitted or required by this Agreement or as Required By Law.
  - c. COUNTY ENTITY agrees to ensure that any agents, including a subcontractor, to whom it provides Protected Health Information received from the STATE agree to the same restrictions and conditions that apply to the COUNTY ENTITY with respect to the Protected Health Information.
  - d. COUNTY ENTITY agrees to not use or disclose the Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the STATE.
  - e. COUNTY ENTITY agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information, Electronic Protected Health Information, and Personal Information other than as provided for by this Agreement.
  - f. COUNTY ENTITY agrees to implement safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the STATE.
  - g. COUNTY ENTITY agrees to keep a log of Breaches of Protected Health Information and/or Personal Information.
  - h. If there is a Breach of Protected Health Information or Personal Information, COUNTY ENTITY shall: (i) notify the STATE in writing of the Breach no later than twenty (20) calendar days after COUNTY ENTITY's discovery of the Breach; (ii) investigate and report to STATE on the causes of the Breach, including without limitation, any steps that COUNTY ENTITY will take to mitigate the Breach and prevent the occurrence of future similar Breaches; (iii) in consultation with STATE, provide all notifications regarding the Breach that STATE and/or COUNTY ENTITY are required to make under ARRA, including without limitation, written notices to individuals, notices to the media, and notices to the Secretary or any other governmental entity, all such notices to be made in accordance with all ARRA requirements; (iv) unless the Breach is primarily caused by the negligence or other fault of the STATE, indemnify and hold STATE harmless from all claims, lawsuits, administrative proceedings,

judgments, damages, liabilities, penalties, and costs arising from the Breach, including all costs of investigating the Breach, providing all required notices, and otherwise complying with all ARRA requirements; and (v) provide a log of all Breaches of Protected Health Information to the STATE no later than twenty (20) calendar days after the end of each calendar year.

- i. COUNTY ENTITY agrees to report to the STATE any use or disclosure of the information that is inconsistent with the uses or disclosures provided for by this Agreement, of which it becomes aware.
- j. COUNTY ENTITY agrees to make available Protected Health Information in accordance with 45 C.F.R. section 164-524.
- k. COUNTY ENTITY agrees to make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with 45 C.F.R. Section 164-526.
- l. COUNTY ENTITY agrees to make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. section 164.528.
- m. COUNTY ENTITY agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from the STATE available to the Secretary of Health and Human Services for purposes of determining compliance with this agreement and with subpart E of 45 C.F.R section 164.
- n. COUNTY ENTITY agrees to, if feasible, return or destroy all Protected Health Information received from the STATE that the COUNTY ENTITY still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- o. COUNTY ENTITY agrees to ensure that the adequate separation between STATE and COUNTY ENTITY, required in 45 C.F.R. Section 504(f)(2)(iii), is satisfied.
- p. COUNTY ENTITY agrees that it shall only allow its personnel/human resource and fiscal/payroll personnel access to the Protected Health Information. These specified employees shall only have access to and use Protected Health Information to the extent necessary to perform the plan administration functions that the COUNTY ENTITY performs for the STATE. In the event that any of these specified employees do not comply with the provisions of this section, the employee shall be subject to disciplinary action by the COUNTY ENTITY, as allowed by collective bargaining agreement or other such rule or policy, for non-compliance.
- q. COUNTY ENTITY agrees to mitigate, to the extent practicable, any harmful effect that is known to COUNTY ENTITY of: (1) a security breach or disclosure or use of Protected Health Information, Electronic Protected Health Information,



or Personal Information by COUNTY ENTITY in violation of the requirements of this Agreement.

- r. COUNTY ENTITY shall, upon notice from STATE, accommodate any restriction to the use or disclosure of Protected Health Information and any request for confidential communications to which STATE has agreed in accordance with the Privacy Rule.

4. Permitted Uses and Disclosures by COUNTY ENTITY

- a. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, COUNTY ENTITY may disclose or use Protected Health Information, Electronic Protected Health Information, and Personal Information to perform functions, activities, or services for, or on behalf of STATE as specified in this Agreement, provided that such disclosure or use would not violate any Privacy and Security Laws if done by STATE.
  - b. Specific Use and Disclosure Provisions. COUNTY ENTITY shall not use or disclose Protected Health Information, Electronic Protected Health Information, or Personal Information for any purpose other than the purpose(s) stated in this Agreement.
5. Minimum Necessary. COUNTY ENTITY shall only request, use, and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use, or disclosure.
6. Termination for Cause. In addition to any other remedies provided for by this Agreement, upon STATE's knowledge of a material breach or violation by COUNTY ENTITY of the terms of this Agreement, STATE may either:
- a. Provide an opportunity for COUNTY ENTITY to cure the breach or end the violation, and terminate this Agreement if COUNTY ENTITY does not cure the breach or end the violation within the time specified by the STATE; or
  - b. Immediately terminate this Agreement if COUNTY ENTITY has breached or violated a material term of this Agreement and cure is not possible.

HAWAI'I EMPLOYER-UNION HEALTH  
BENEFITS TRUST FUND ("STATE")

By Sandra J. Jahnke  
Its Administrator

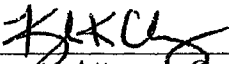
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County of Maui ("COUNTY ENTITY")

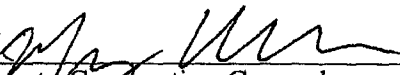
By \_\_\_\_\_  
ALAN M. ARAKAWA  
Its Mayor

Date: \_\_\_\_\_, 2014

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General  
State of Hawai'i

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Deputy Corporation Counsel  
County of Maui