

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050462

1. ACTION REQUESTED/PURPOSE: Amend the health plan contract with Aetna to reflect the new HIPAA security rules on electronic protected health information.

2. WHAT ACTION ACCOMPLISHES: Brings our health plan contract with Aetna into compliance with new federal regulations regarding HIPAA (Health Insurance Portability and Accountability Act). Portions of this act protect the privacy of health information. New regulations concern the security of Protected Health Information (PHI) in electronic form.

3. MANAGEMENT RECOMMENDATION:

4. Departmental Category:

C6D

5. Meeting Date: *04-19-2005*

6. Agenda:
 Consent
 Administrative
 Appeals
 Public
 Walk-On

7. Requirement/Purpose: (specify)
 Statute
 Ordinance
 Admin. Code
 Other *45CFR*
 Federal Regulations

8. Request Initiated:
 Commissioner _____
 Department Human Resources
 Division _____
 By: Dinah Lewis

9. Background: HIPAA has a privacy section which regulates the protection of health information. The electronic security portion of this regulation will go into effect April 21, 2005. We are required to institute security safeguards with our business associates (in this case Aetna) to ensure the security of health information in electronic form. This contract amendment brings the Business Associate Agreement, required by HIPAA, into compliance with regulations.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<i>[Signature]</i>		<i>[Signature]</i>		<i>[Signature]</i>	Analyst	Risk	Grants	Mgr.	
		<i>4-4-05</i>		<i>4/4/05</i>	<i>4/14/05</i>	<i>4/14/05</i>	<i>4/15/05</i>	<i>4/15/05</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty
Date: <i>4/14/05</i>
Time: <i>10:30</i>
Forwarded To: <i>Admin</i>
<i>4/14/05</i>


RECEIVED BY COUNTY ADMIN:
<i>4-4-05</i> <i>124</i>
<i>3:15</i>
COUNTY ADMIN FORWARDED TO:
<i>4/17/05</i>
<i>1pm</i>

RK
WHH

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: December 1, 2004

To: Patty Coram
Employee Relations
Human Resources

FROM: 
Jack N. Peterson
Assistant County Attorney

RE: **HIPAA SECURITY RULE AMENDMENT CONTRACT WITH AETNA**

Since this document amends the current Aetna contract and binds the County to the new HIPAA security rules that take effect in April 2005, I recommend it be forwarded to the Board of County Commissioners' Chairman for signature as a regularly scheduled blue sheet item.

JNP/cdd

04 DEC -1 PM 3:03

We want you to know™



4630 Woodland Corporate Blvd.
Tampa, FL 33614

Meredith Flanagan
Senior Account Manager
Phone: 813-775-0305
Fax: 813-775-0612

DEC 1 11 53 AM '04

November 15, 2004

Charlotte Veaux
Lee County BOCC.
P.O. Box 398
Ft. Myers, FL 33902-0398

Re: HIPAA Security Rule

Dear Ms. Veaux:

You have probably heard about the new HIPAA Security Rule. The Security Rule requires health plans (including employer sponsored self-funded plans), and their respective business associates to institute security safeguards to protect individually-identifiable health information when it is in electronic form ("electronic Protected Health Information" or ePHI). For Aetna and other large health plans, the compliance date for the HIPAA Security Rule is April 21, 2005.

If you have not done so already, we urge you to consult your professional/legal advisors for guidance on how the HIPAA Security Rule will impact you and what, if anything, you need to do to comply. Although we can't substitute for this professional guidance, we thought it might be helpful to highlight some of the issues that you will need to consider – accordingly, a **Plan Sponsor Guide to the HIPAA Security Rule** is available to you via Aetna.com.

In addition, self-funded plans will need to enter into "business associate" agreements with all service providers, such as Aetna, who have access to ePHI. As you may recall, in response to the HIPAA Privacy Rule, Aetna mailed a signed Administrative Services Contract (ASC) amendment that included the prescribed HIPAA Privacy Business Associate language to our self-funded customers. Now, in response to the new HIPAA Security Rule, we are offering our self-funded customers a Business Associate Amendment that complies with the HIPAA Security Rule requirements.

For your convenience, enclosed are two (2) copies of a signed HIPAA Security Business Associate Amendment. Please sign and return one (1) copy of the Amendment to my attention. If you already have a signed Business Associate Agreement with Aetna that complies with the HIPAA Security Rule, there is no need for you to do anything with the enclosed Amendment.

Also, we are pleased to inform you that a **Summary of Aetna's Privacy Procedures as a Business Associate to a Self-Funded Plan Sponsor's Group Health Plan** is available via Aetna.com. Although this Summary is unrelated to HIPAA Security, we are including the link in response to the many customer inquiries and requests for information we have received.

We hope these materials are helpful to you and urge you to share them with your professional advisors. Please contact me if you have any questions about the information provided.

Sincerely,


Meredith Flanagan
Senior Account Manager

FI/SFGP

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
SECURITY RULE AMENDMENT**

THIS AMENDMENT dated as of September 1, 2004 (the "Amendment") amends each Administrative Services Agreement under Group Control No(s) 881674 (the "Agreement") between LEE COUNTY BOCC ("Customer") and Aetna Life Insurance Company or any of its affiliates ("Aetna").

WHEREAS, the Department of Health and Human Services ("HHS") has promulgated regulations at 45 C.F.R. Parts 160-64, implementing the security requirements set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (the "Security Rule");

WHEREAS, the Security Rule provides, among other things, that a covered entity is permitted to disclose Electronic Protected Health Information (as defined below) to a business associate and allow the business associate to obtain and receive Protected Health Information, if the covered entity obtains satisfactory assurances in the form of a written contract that the business associate will appropriately safeguard the Electronic Protected Health Information;

WHEREAS, Aetna will have access to, maintain, transmit, create and/or receive certain Electronic Protected Health Information in conjunction with the services being provided under the Agreement, thus necessitating a written agreement that meets the applicable requirements of the Security Rule; and

WHEREAS, Customer and Aetna have mutually agreed to satisfy the foregoing regulatory requirements through this Amendment to the Agreement.

NOW THEREFORE, Customer and Aetna agree as follows:

The Agreement is hereby amended, by the addition of the following provisions:

1. **Definitions.** The following terms shall have the meaning set forth below:
 - (a) **C.F.R.** "C.F.R." means the Code of Federal Regulations.
 - (b) **Electronic Protected Health Information.** "Electronic Protected Health Information" means information that comes within paragraphs 1(i) or 1(ii) of the definition of "Protected Health Information", as defined in 45 C.F.R. 160.103.
 - (c) **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
 - (d) **Security Incident.** "Security Incident" has the meaning assigned to such term in 45 C.F.R. 164.304.

2. **Obligations and Activities of Aetna**
 - (a) Aetna agrees to report to Customer any Security Incident of which it becomes aware.

(b) Aetna agrees to make policies, procedures and documentation relating to the safeguarding of Electronic Protected Health Information available to Customer, or, at the request of Customer to the Secretary, in a time and manner designated by the Customer or the Secretary, for purposes of the Secretary determining Customer's compliance with the Security Rule.

(c) Aetna shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Customer, as required by 45 C.F.R. Part 164, Subpart C.

(d) Aetna shall ensure that any agent, including a subcontractor to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.

3. Term and Termination

(a) Term. The provisions of this Amendment shall take effect on the later of (i) April 21, 2005, or (ii) the compliance date applicable to Customer under the Security Rule if different than (i) and shall terminate when all of the Electronic Protected Health Information provided by Customer to Aetna, or created, maintained, transmitted or received by Aetna on behalf of Customer, is destroyed or returned to Customer, or, if it is infeasible to return or destroy Electronic Protected Health Information, protections are extended to such information in accordance with this Section.

(b) Termination for Cause. Without limiting the termination rights of the parties pursuant to the Agreement and upon Customer's knowledge of a material breach by Aetna, Customer shall either:

- i. Provide an opportunity for Aetna to cure the breach or end the violation, or terminate the Agreement, if Aetna does not cure the breach or end the violation within the time specified by Customer,
- ii. Immediately terminate the Agreement, if cure of such breach is not possible;
- iii. If neither termination nor cure is feasible, Customer shall report the violation to the Secretary.

(c) Effect of Termination. The parties mutually agree that it is essential for Electronic Protected Health Information to be maintained after the expiration of the Agreement for regulatory and other business reasons. The parties further agree that it would be infeasible for Customer to maintain such records because Customer lacks the necessary system and expertise. Accordingly, Customer hereby appoints Aetna as its custodian for the safe keeping of any record containing Electronic Protected Health Information that Aetna may determine it is appropriate to retain. Notwithstanding the expiration of the Agreement, Aetna shall extend the protections of this Amendment to such Electronic Protected Health Information, and limit further use or disclosure of the Electronic Protected Health Information to those purposes that make the return or destruction of the Electronic Protected Health Information infeasible.

4. Miscellaneous

(a) Regulatory References. A reference in this Amendment to a section in the Security Rule means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. Upon the enactment of any law or regulation affecting the safeguarding of Electronic Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, amend the Agreement and this Amendment in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with such amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, then either of the parties may terminate the Agreement on thirty (30) days written notice to the other party.

(c) Survival. The respective rights and obligations of Aetna under Sections 3(c) and 5 of this Amendment shall survive the termination of this Amendment.

(d) Interpretation. Any ambiguity in this Amendment shall be resolved in favor of a meaning that permits Customer to comply with the Security Rule.

(e) No third party beneficiary. Nothing express or implied in this Amendment or in the Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

(f) Governing Law. This Amendment shall be governed by and construed in accordance with the same internal laws as that of the Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement.

[AETNA]

By: Ronald A. Williams
Name: Ronald A. Williams
Title: President

[REGISTRAR]

By: Guy A. Glaude
Name: Guy Glaude
Title: Registrar

[CUSTOMER]

By: _____
Name: _____
Title: _____