



# Montgomery County Board of Commissioners

## Ordinance 2021-13

### An Ordinance Amending the County's Policies to Include HIPAA Policy, Amending Section 4.09 of the Employee Handbook and Approving HIPAA Plan

WHEREAS, the Board of Commissioners periodically reviews County policies in order to manage risk related to providing government services and receives recommendations from the Risk Management Committee; and

WHEREAS, as a result of these reviews and recommendations, the Board has determined that the County's HIPAA Policy, currently found in Section 4.09 of the Employee Handbook, should be added to Chapter 36 where the County policies are located; and

WHEREAS, the County Attorney has recommended certain clarifying changes to Section 4.09 of the Employee Handbook; and

WHEREAS, in order to implement the HIPAA Policy, the County Attorney and County Administrator have prepared a HIPAA plan and requested that the plan be approved; and

WHEREAS, the Board finds that the insertion of the HIPAA policy into Chapter 36, the amendment of Section of 4.09 of the Employee Handbook, and adoption of the HIPAA Plan all further the County's interest in safeguarding protected health information and that these changes are in the best interests of the citizens of Montgomery County and should be approved.

NOW, THEREFORE, IT IS ORDAINED by the Montgomery County Board of Commissioners that a new section, namely Section 36.35 is hereby added to the County Code and that this new section will read as follows:

**“§36.35       HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT  
(HIPAA) POLICY**

(A) HIPAA Policy. The County will comply with all applicable portions of the Health Insurance Portability & Accountability Act of 1996 (HIPAA) in order to safeguard the protected health information of its employees and persons covered under the County’s benefit plans and to comply with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rules) issued by the United States Department of Health and Human Services. For purposes of this policy, the term “protected health information” means any information that identifies the patient that relates to the patient’s past, present or future physical condition, mental condition, or payment for medical expenses. In order to safeguard protected health information of its employees and persons covered under its benefit plans, the County will take all steps necessary to reasonably safeguard protected health information from any intentional or unintentional use or disclosure that is in violation of the standards of HIPAA. The County has implemented a plan to reasonably safeguard protected health information. Employees or other persons who have complaints regarding the County’s policies or procedures or conduct regarding its duties under HIPAA should submit a written complaint to his or her department head and to the County Administrator. Upon receipt of the complaint, the County Administrator will notify the County Attorney and the Grievance Committee (the Board of Commissioners). The Grievance Committee respond to any such complaint within ten (10) days of receipt of the grievance. The County’s response will be in writing and will be delivered to the employee filing the complaint.

(B) Discipline for Violating Policy. All employees have a duty to comply with this policy and to protect the protected health information of other employees and other persons covered under the County’s benefit plans. Employees violating the County’s policies, procedures and/or HIPAA will be subject to discipline for such violation.

(C) Breach. To the extent that the County discovers a harmful effect of a violation of its policies and/or procedure, the County will take all necessary action to mitigate such effects.

(D) No Retaliation. The County will not retaliate or intimidate any employee or other person who exercises his or her rights under the County’s policies, procedures of HIPAA.

(E) No Waiver of Rights. The County will not require an employee or other person covered under the County’s benefit plan to waive his or her rights under HIPAA as a condition of the provision of treatment, payment, enrollment in a health plan or

eligibility for benefits. In order to ensure that no waiver of rights is required under the County's health insurance plan, the County will review all enrollment materials.

(Added by Ordinance 2021- 13, adopted March 22, 2021)"

IT IS FURTHER ORDAINED that Section 4.09 of the Employee Handbook is hereby amended to read as follows:

**4.09 HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT (HIPAA) POLICY**

4.09.1 HIPAA Policy. The County will comply with all applicable portions of the Health Insurance Portability & Accountability Act of 1996 (HIPAA) in order to safeguard the protected health information of its employees and persons covered under the County's benefit plans and to comply with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rules) issued by the United States Department of Health and Human Services. For purposes of this policy, the term "protected health information" means any information that identifies the patient that relates to the patient's past, present or future physical condition, mental condition, or payment for medical expenses. In order to safeguard protected health information of its employees and persons covered under its benefit plans, do so, the County will take all steps necessary to reasonably safeguard protected health information from any intentional or unintentional use or disclosure that is in violation of the standards of HIPAA. The County has implemented a plan to reasonably safeguard protected health information. Employees or other persons who have complaints regarding the County's policies or procedures or conduct regarding its duties under HIPAA should submit a written complaint to his or her department head and to the County Administrator. Upon receipt of the complaint, the County Administrator will notify the County Attorney and the Grievance Committee (the Board of Commissioners). The Grievance Committee will respond to any such complaint within ten (10) days of receipt of the grievance. The County's response will be in writing and will be delivered to the employee filing the complaint.

4.09.2 Discipline for Violating Policy. All employees have a duty to comply with this policy and to protect the protected health information of other employees and other persons covered under the County's benefit plans. Employees violating the County's policies, procedures and/or HIPAA will be subject to discipline for such violation.

4.09.3 Breach. To the extent that the County discovers a harmful effect of a violation of its policies and/or procedure, the County will take all necessary action to mitigate such effects.

4.09.4 No Retaliation. The County will not retaliate or intimidate any employee or other person who exercises his or her rights under the County's policies, procedures of HIPAA.

4.09.5 No Waiver of Rights. The County will not require an employee or other person covered under the County's benefit plan to waive his or her rights under HIPAA as a condition of the provision of treatment, payment, enrollment in a health plan or eligibility for benefits. In order to ensure that no waiver of rights is required under the County's health insurance plan, the County will review all enrollment materials.

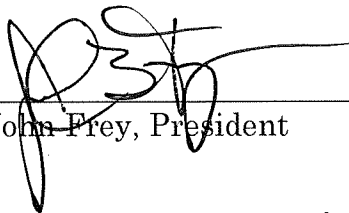
IT IS FURTHER ORDAINED that the HIPAA Plan, which is attached as "Exhibit A" is hereby approved.

IT IS FURTHER ORDAINED that the County Administrator will inform all Department Heads of the adoption of this policy, changes to Employee Handbook and adoption of the plan.

IT IS FURTHER ORDAINED that all other provisions of the County Code and Employee Handbook which are not expressly amended by this ordinance will remain in full force and effect.

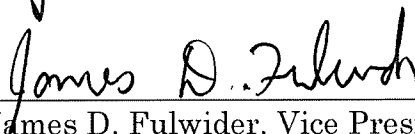
Adopted this 22nd day of March, 2021.

Montgomery County  
Board of Commissioners:



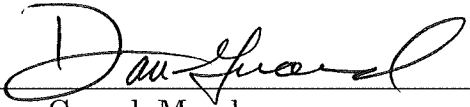
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John Frey, President



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James D. Fulwider, Vice President

  
Dan Guard, Member

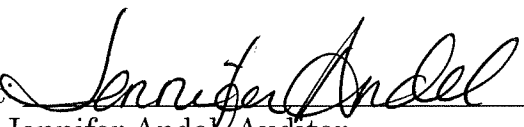
Attest   
Jennifer Andel, Auditor

EXHIBIT A

## **Montgomery County HIPPA Plan**

In order to carry out the HIPAA Policy, the County Administrator will implement this plan and regularly report to the Board of Commissioners regarding the execution of the plan and compliance with the law. This plan is designed to ensure compliance with the Privacy Rule promulgated by the United States Department of Health and Human Services, the County's HIPAA Policy, and other federal and state laws with further the purpose of safeguarding protected health information (PHI). The protections provided for by HIPAA extend to both employees and to family members of employees and others who are covered by the County's employee benefit programs. This plan will be disseminated annually to all employees.

### **Rule 1: Segregation**

1.01. All PHI will be maintained by a supervisor or administrator in a separate file for each employee and not the employee's general personnel file. This separate file containing PHI is referred to as the HIPAA file.

1.02 All files containing PHI will be maintained by the records custodian in a locked file cabinet or password-protected electronic file.

1.03 All documents in the HIPAA file will be maintained on colored paper in order to distinguish it from other documents and to alert all persons that the documents are protected from unauthorized access.

### **Rule 2: Access**

2.01 In order to comply with the County HIPAA policy, all access to PHI will be limited to only the following classes of persons:

1. Employees: access to employee PHI will be granted to employees for their own PHI by written request;
2. Other Covered Persons: access to the PHI of other persons will be granted to other persons for their own PHI if they are covered by one of the County's employee benefit programs;
3. Supervisors/Administrators: access to the PHI of employees or other persons will be granted to those supervisors of such employees or administrative employees if the PHI is needed for the requestor in order to carry out their job duties; and
4. Third Parties: access to PHI will be granted to third parties only by written request made by:

- a. the legal representative of an employee or other person covered;
- b. a party to litigation against an employee or other person covered;
- c. law enforcement officials seeking to obtain relevant information concerning an investigation or case involving an employee or other person covered; and
- d. the National Instant Background Check System (NICS) seeking to obtain information relevant to the issuance of a firearms permit or license.

2.02 All requests for access must be made in writing.

2.03 All requests for access must be maintained by the custodian in the HIPAA file and in a separate HIPAA access log.

2.04 Only the custodian may grant access.

2.05 All access must be documented by the custodian in the access log and must include the name, address, email, and telephone number of the person granted access, the date of access, and the purpose stated in the request.

2.07 All access to third parties must be approved by the County Administrator and County Attorney.

2.08 The custodian must document whether copies of the HIPAA file or any of its contents were made and provided to the requestor.

2.09 For all requests, the custodian must notify the employee of the request for access and obtain a consent to release from the employee.

2.10 The custodian will comply with subpoenas, warrants and other legally-required access only if approved by the County Attorney.

### **Rule 3 Communication**

3.01 Employees and officials who have knowledge of PHI may not communicate with anyone regarding the knowledge of PHI unless the disclosure is required in the execution of the duties of the employee's job or the official's responsibilities or authorized in writing by the employee.

### **Rules 4 Corrections**

4.01 Employees have the right to request that corrections be made to records containing their PHI. All such requests will be forwarded to the County Administrator for determination.

4.02 All determinations regarding correction will be made in writing within 10 days of receipt of the request when practicable.

### **Rule 5 Grievances**

5.01 Any person having a grievance regarding the County's administration of this plan or the policy may file a written grievance. All grievances must be delivered to the County Administrator.

5.02 Upon receipt of a grievance, the County Administrator will acknowledge receipt to the person filing the grievance and notify the Board of Commissioners.

5.03 Within 10 days of receipt, the Board of Commissioners will investigate the grievance and make written findings. The Board may conduct a private hearing with the person filing the grievance. Written findings will be delivered to the person filing the grievance.

### **Rule 6 Breaches**

If the County becomes aware of a breach of its policy, the County Administrator will notify all affected persons. This notice will be in writing. The County will mitigate the effects of any breach. Any employee, vendor, or official who becomes aware of a breach has an affirmative duty to report the breach to the County Administrator.

### **Rule 7 Review and Reporting**

The Board of Commissioners will appoint a HIPAA Review Committee, and this Committee will annually review the administration of this plan and the policy and report to the Board regarding any violations, breaches, proposed changes to the policy or plan, and any other matter which will promote the protection of PHI.

### **Rule 8 Training**

In order to encourage full compliance with the plan and policy, the County Administrator will ensure that annual training is conducted for all employees and officials who administer or are in position to receive PHI and that annual training is conducted for the Board. In addition, the employee handbook contains information regarding the County's policy.

### **Rule 9 Employee Discipline**



Employees who violate the County HIPAA plan or policy will be subject to discipline.