MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF DEFENSE
AND
THE DEPARTMENT OF VETERANS AFFAIRS

FOR PURPOSES OF DEFINING
DATA-SHARING BETWEEN THE DEPARTMENTS

SUBJECT: The sharing of Protected Health Information (PHI) and other individually identifiable information between the Department of Defense (DoD) and the Department of Veterans Affairs (VA) and its components.

1. Purpose:

The purpose of this memorandum is to state throughout the Department of Defense (DoD) and the Department of Veterans Affairs (VA) those circumstances in which it is appropriate to share Protected Health Information (PHI) and other individually identifiable information. In addition, the memorandum is intended to establish the respective responsibilities and authorities of DoD and VA to share data as defined by the Health Insurance Portability and Accountability Act (HIPAA), the Privacy Act, and other applicable authority. These responsibilities and authorities will enable the rapid transfer of data between the agencies to ensure timely delivery of health care benefits and the processing of VA disability compensation claims and other benefit applications. This Memorandum of Understanding (MOU) does not address data sharing covered by separate agreements required by law, e.g., computer matching agreements under the Privacy Act, where DoD and VA have decided as a matter of policy that a separate agreement is appropriate, or where the data sharing is incident to a separate agreement required by law.

2. Scope:

This MOU addresses the transfer of information, including protected health information, on all service members who transition from DoD to VA during the life cycle of service to their country or who are eligible for benefits administered by VA during their military service. It is designed to become an enduring process that will support the services of DoD and VA that have interdependence on sharing of data. For the purposes of the authorities section of this MOU, the term "DoD TRICARE" indicates the HIPAA-covered functions of DoD, "DoD" indicates all functions of DoD, "VHA" indicates the HIPAA-covered functions of VA, and "VA" indicates all functions of VA.

3. Objective:

The objective of this understanding is to identify the authorities by which VA and DoD may share protected health information, other individually-identifiable information or aggregate or de-identified data for the purpose of meeting the statutory responsibilities of both departments. This includes, but is not limited to:

a. Providing service members with comprehensive benefits counseling.
b. Assisting them in filing claims.
c. Obtaining all of their relevant service medical records, including Physical Examination Board (PEB) proceedings.
d. Advising them of, and providing them with, VA or DoD health care as indicated.
e. Providing any necessary assistance with enrollment and appointments in the VA health system.
f. Expeditiously processing Veterans Benefits Administration (VBA) benefits application(s) for service members who are, or may be, eligible for VA benefits.
g. Providing for automated documentation of service in a combat zone to ensure easy confirmation of eligibility for the 24 months of care for conditions related to that service.

4. Authorities: It is critical that these authorities be administered by Department (VA and DoD) or Administration (VHA and TRICARE) as indicated below. Some are only applicable between the health care functions (covered entities under HIPAA) and/or their business associates and some apply to all components of the Departments.

a. Department of Defense:

i. Shall provide VHA with information necessary for VHA to provide medical treatment to veterans or transitioning military personnel when appropriate (45 CFR §164.506(c)(2)), and/or
ii. Shall share information with VHA for payment purposes when appropriate (45 CFR §164.506(c)(3)), and/or
iii. Shall disclose protected health information when appropriate to VHA for its health care operations, such as for purposes of health care quality assessment and improvement activities (45 CFR §164.506(c)(4)), and/or
iv. Shall disclose information to VHA as necessary and appropriate to coordinate the covered functions of their programs or to improve administration and management relating to the functions (45 CFR §164.512(k)(6)(ii)), and/or
v. Shall provide a service member's information to VA, including all Administrations, pursuant to prior written authorization by the service member (45 CFR §164.508), and/or

vi. Shall disclose information to VA, including all Administrations, when such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law, or as necessary to comply with law relating to disability compensation for service-related injuries or illnesses or other title 38 benefits. (45 CFR §164.512(a)(1); 45 CFR § 164.512(l); 38 U.S.C. § 5106).

vii. Shall provide information to VA upon the separation or discharge of an individual from military service for the purpose of determining eligibility for, or entitlement to, benefits under laws administered by the Secretary of Veterans Affairs (45 CFR §164.512(k)(1)(ii)).

b. Department of Veterans Affairs:

i. Shall provide DoD TRICARE with information necessary for DoD TRICARE to provide medical treatment to veterans or transitioning military personnel when appropriate (45 CFR §164.506(c)(2)), and or

ii. Shall share information with DoD TRICARE for payment purposes when appropriate (45 CFR §164.506(c)(3)), and/or

iii. Shall disclose protected health information when appropriate to DoD TRICARE for its health care operations, such as for purposes of health care quality assessment and improvement activities (45 CFR §164.506(c)(4)), and/or

iv. Shall disclose information to DoD TRICARE as necessary and appropriate to coordinate the covered functions of their programs or to improve administration and management relating to the functions. (45 CFR §164.512(k)(6)(ii);), and/or

v. Shall provide a veteran or service member's information to DoD, including all Services, pursuant to prior written authorization by the service member (45 CFR §164.508).

vi. Shall disclose information to DoD, including all Services when such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law (45 CFR §164.512(a)(1), and/or

vii. Via VBA, shall make the determinations as to the service-connected status of veterans, as well as the degree of disability associated with a service-connected disability (38 USC §7703).

c. Other Disclosure Authorities.

i. Each Department shall ensure that appropriate Privacy Act authority exists to make the disclosures covered by this MOU.

ii. Authority exists under 38 U.S.C. § 7332, and 42 U.S.C. § 290dd-2, where applicable, to make the disclosures covered by this MOU.

iii. This MOU recognizes authority for a request by DoD for information from VA under 38 U.S.C. § 5701(b)(3).
iv. This MOU does not address the sharing of medical quality assurance information protected by 10 U.S.C. § 1102 and 38 U.S.C. § 5705.

d. Other Organizations:

Organizations which, or individuals who, request the PHI of hospitalized service members in order to help them apply for benefits, may not receive PHI unless a HIPAA-compliant authorization is completed by the individual service member and provided to VHA or DoD TRICARE, or other legal authority for the disclosure exists. DoD and VA may disclose other individually-identifiable information consistent with applicable legal requirements.

5. Additional Responsibilities:

a. Department of Defense:

i. Will ensure that each of the Services identifies a point of contact (POC) to facilitate coordination of issues related to this program.
ii. Will ensure that VA receives a list of all service members who have served in a Theater of Operations so that VA will be able to readily document all service members who are eligible for VA's special two-year treatment authority for certain combat veterans.

b. Department of Veterans Affairs:

i. Will ensure that VHA and VBA identify points of contact from each program to facilitate coordination with DoD on issues related to the benefit application and discharge planning processes.
ii. Will coordinate the role of VHA in the rapid processing of service members being medically retired/separated.
iii. Will provide reports to DoD on veterans' health care issues and the number of service members treated.
iv. Will expedite enrollment of service members in the VA health care system.

6. Issue resolution:

Throughout the course of this agreement, issues such as scope of coverage of this MOU, interpretation of its provisions, unanticipated technical matters, and proposed modifications can be expected. The Departments agree to appoint their respective points of contact and to work together in good faith to resolve such issues in a manner that is fair, equitable, and supportive of the objectives of VA/DoD information sharing.

7. Review:

A review of this MOU will be conducted to assess the effectiveness of the program 180 days from the date of this agreement and bi-annually thereafter.

8. Modification and Termination.

a. This MOU may be modified at any time by agreement of the parties.

b. This agreement may be terminated by either party if the party terminating the agreement provides sixty days written notice of the intent to terminate the MOU

9. Effective date:

This agreement becomes effective upon completion of the signatures of all parties to the agreement. The agreement may be modified with the mutual consent of all parties.

10. Approval:

William Winkenwerder, Jr., MD
Assistant Secretary of Defense
for Health Affairs

21 June 2005
(Date)

Jonathan B. Perlin, MD, PhD, MSHA, FACP
Under Secretary for Health
Department of Veterans Affairs

MAY 19 2005
(Date)

Charles S. Abell
Principal Deputy Under Secretary
of Defense for Personnel and Readiness

June 27, 2005
(Date)

Daniel L. Cooper
Under Secretary for Benefits
Department of Veterans Affairs

19 May 2005
(Date)