

# ***2010 Data Protection Seminar***

***TMA Privacy Office***



## **Data Sharing Agreements**



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TRICARE  
Management Activity

## Data Sharing Agreements

# Purpose

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Discuss the role of the TRICARE Management Activity (TMA) Privacy Office in authorizing the use and disclosure of TMA owned and/or managed Military Health System (MHS) data



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## Data Sharing Agreements

# Objectives

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- Upon completion of this presentation, you should be able to:
  - Define the role of the TMA Privacy Office in authorizing the use and disclosure of MHS data owned and/or managed by TMA
  - Explain the current Data Use Agreement (DUA) process, and the use of Business Associate Agreements (BAAs) and Interagency Agreements
  - Identify developments in the data sharing restructuring initiative



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## Data Sharing Agreements

# Role of the TMA Privacy Office

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- The role of the TMA Privacy Office is to **authorize** the use and disclosure of TMA owned and/or managed MHS data and to ensure compliance with applicable privacy regulations
  - DoD 6025.18-R, “DoD Health Information Privacy Regulation”, (implementing the Health Insurance Portability and Accountability Act [HIPAA] Privacy Rule)
  - DoD 5400.11-R, “DoD Privacy Program”, (implementing the Privacy Act of 1974)
  - DoD 8580.02-R, “DoD Health Information Security Regulation”, (implementing the HIPAA Security Regulations)



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# Role of the TMA Privacy Office (continued)

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- To **obtain** access to information system applications or data sources, contact the responsible program office
  - Defense Health Services Systems (DHSS) Program Office can be reached at [eidsaccess@tma.osd.mil](mailto:eidsaccess@tma.osd.mil)



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# Purpose of the DUA

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- The term DUA is currently used in a broad sense, monitoring different types of requests for the use and/or disclosure of MHS data
- The purpose of a DUA is to:
  - Serve as an agreement between a recipient of MHS data and the TMA Privacy Office
  - Document compliance with DoD regulations and applicable privacy laws
  - Identify data owned and/or managed by TMA that is required to meet specific data requests
  - Outline the permitted uses and disclosures



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# Who Must Submit a DUA?

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- A person or entity that seeks to obtain MHS data that are owned and/or managed by Health Affairs (HA) and TMA must submit a request to the TMA Privacy Office
- A person or entity seeking data from the Army, Navy, or Air Force data must direct their request to the respective service as follows:
  - Army DUA Submissions:  
[ARMY.DUA@pasba2.amedd.army.mil](mailto:ARMY.DUA@pasba2.amedd.army.mil)
  - Navy DUA Submissions:  
[dua.bumed@med.navy.mil](mailto:dua.bumed@med.navy.mil)
  - Air Force Submissions:  
[AF\\_SGDDataUseAgreement@pentagon.af.mil](mailto:AF_SGDDataUseAgreement@pentagon.af.mil)



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## Data Sharing Agreements

# Current Types of DUAs

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- Two types of frequently used DUAs:
  - DUA requesting personally identifiable information (PII), protected health information (PHI) and/or limited data set (LDS)
    - PHI refers to individually identifiable health information that is transmitted or maintained by electronic or any other form or medium, except as otherwise contained in employment records
    - PII refers to information that can be used to distinguish or trace an individual's identity



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Sources: DoD 6025.18-R, "DoD Health Information Privacy Regulation", January 24, 2003 and DoD 5400.11-R, "DoD Privacy Program", May 14, 2007



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# Current Types of DUAs (continued)

- DUA requesting LDS (continued):
  - LDS refers to PHI that excludes the following 16 direct identifiers listed in the HIPAA Privacy Rule of the individual or of relatives, employers, or household members of the individual:

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|---|---|
| 1. Names  | 10. Certificate/license numbers   |
| 2. Postal address information, other than town or city, State, and zip code | 11. Vehicle identifiers and serial numbers, including license plate numbers |
| 3. Telephone numbers  | 12. Device identifiers & serial numbers                                     |
| 4. Fax numbers  | 13. Web Universal Resource Locators (URLs)                                  |
| 5. Electronic mail addresses  | 14. Internet protocol (IP) address numbers                                  |
| 6. Social security numbers  | 15. Biometric identifiers, including finger & voiceprints                   |
| 7. Medical record numbers   | 16. Full-face photographic images and comparable images                     |
| 8. Health plan beneficiary numbers  | (See, DoD 6025-18-R at C8.3 for more detail)                                |
| 9. Account numbers  |   |



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# Current Types of DUAs (continued)

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- Two types of frequently used DUAs (continued):
  - DUA requesting De-Identifiable Data
    - Where PHI is requested and will be de-identified *after* it is disclosed, a PHI DUA is required
    - De-Identified Data refers to health information that does not identify an individual and there is no reasonable basis to believe that the information can be used to identify an individual. PHI can be de-identified using one of the methods outlined on the next slide



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# Current Types of DUAs (continued)

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- Methods of de-identifying data
  - **Statistical Method:** A qualified statistician or scientific expert concludes, through the use of accepted analytic techniques, that the risk the information could be used alone, or in combination with other reasonably available information, to identify the subject is very small
  - **Safe Harbor Method:** Removal of 18 identifiers of the individual or of relatives, employers, or household members of the individual



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# Current Types of DUAs (continued)

The following 18 identifiers are to be removed when using the safe harbor method:

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|--|---|
| <ol style="list-style-type: none"><li>1. Names</li><li>2. All geographic subdivisions smaller than a State</li><li>3. All elements of dates (except year) directly related to an individual</li><li>4. Telephone numbers</li><li>5. Fax numbers</li><li>6. Electronic mail addresses</li><li>7. Social security numbers</li><li>8. Medical record numbers</li><li>9. Health plan beneficiary numbers</li><li>10. Account numbers</li></ol> | <ol style="list-style-type: none"><li>11. Certificate or license numbers</li><li>12. Vehicle identifiers and serial numbers, including license plate numbers</li><li>13. Device identifiers and serial numbers</li><li>14. Web Universal Resource Locators (URLs)</li><li>15. Internet Protocol (IP) address</li><li>16. Biometric identifiers, including fingerprints and voice prints</li><li>17. Full-face photographs and comparable images</li><li>18. Any unique, identifying number, characteristic or code, except as permitted for re-identification under HIPAA</li></ol> <p>(See, DoD 6025-18-R at C8.1 for more detail)</p> |
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## Data Sharing Agreements

# Overview of the DUA Process

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- Upon submission, the DUA team within the TMA Privacy Office reviews the DUA to ensure it contains all necessary content
- A DUA analyst is assigned to review each DUA submission and will provide assistance to the data sharing requestor and TMA sponsor as needed
- Evaluation of the DUA includes, but is not limited to, reviewing the purpose of the data request and further reviews the specific type and amount of data requested to ensure it meets the minimally necessary requirements under HIPAA



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# Overview of the DUA Process (continued)

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- Where other approvals are required, such as from an Institutional Review Board, the TMA Privacy Board and/or the Health Program Analysis and Evaluation Office for research-related data requests, the DUA monitors that such approvals are in place prior to approving the DUA and authorizing access to MHS data
- The primary focus of the DUA analysis is to ensure compliance with the Privacy Act, HIPAA, and DoD implementation regulations



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## Data Sharing Agreements

# DUA Resources

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- DUA templates are available on the TMA Privacy Office Web site at <http://www.tricare.mil/tma/privacy/Templates.aspx>
- Information about updating your DUA, including a change in the DUA sponsor, a change in the custodian, renewals, and extensions are available at:  
<http://www.tricare.mil/tma/privacy/DataUseAgreements.aspx>



## Data Sharing Agreements

# Restructuring Initiative Overview

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- The TMA Privacy Office is in the midst of a restructure, where data sharing agreements (DSA) will be the umbrella term and a DUA will be a specific type of agreement as defined by the HIPAA Privacy Rule and DoD 6025.18-R
- The purpose of the data sharing restructuring initiative is:
  - To more closely align the data sharing process with DoD 6025.18-R
  - To streamline the process and provide more targeted DSAs that focus on who is requesting data, what type of data is requested, and why it is requested
  - To enhance regulatory compliance and accountability



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# Status of the Restructuring Initiative

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- Established a TMA Privacy Board to review and ensure HIPAA compliance for research-related data requests
- Developed a new process for identifying and handling “limited data set” requests for research, public health, and/or health care operation purposes
- Enhanced reviews for compliance with the HIPAA Security Rule and developed the System Security Verification to replace the System Assurance Questionnaire



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## Data Sharing Agreements

# Status of the Restructuring Initiative (continued)

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- Streamlined collaboration with DHSS to help expedite access to MHS data
- Continued to analyze different types of data sharing requests and work to lay a strong foundation for the restructure in order to improve clarity, regulatory compliance, and ease-of-use



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## Data Sharing Agreements

# Impact of the Restructuring Initiative

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- Currently, the data sharing restructuring initiative only affects the way in which DUAs are reviewed internally by the TMA Privacy Office and does not affect the way in which data requests are made under the current process
- Ultimately, the data sharing restructuring initiative will change the current DUA templates in use to a questionnaire-type template in order to focus on specific types of requests, and ensure regulatory compliance with specific agreements
- All DUAs submitted and approved under the current process will continue to be valid and will not be affected by new templates that may be implemented over time



## Data Sharing Agreements

# Business Associate Agreements

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- Generally, business associates (BAs) are those who perform, or assist in the performance of, a function or activity involving the use or disclosure of PHI on behalf of a covered entity
- When a BA seeks MHS data to provide a service to TMA, a DUA must be submitted to the TMA Privacy Office
- In reviewing the DUA, the TMA Privacy Office obtains confirmation that BAA language is contained in the underlying contract with TMA
- BAAs are used to document satisfactory assurances as required under HIPAA



## Data Sharing Agreements

# Interagency Agreements

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- The TMA Privacy Office is responsible for reviewing interagency agreements for compliance with applicable privacy and HIPAA security regulations
- The most frequently encountered types of agreements received by the TMA Privacy Office for review include:
  - Memorandum of Agreement: Between DoD and external government agencies
  - Memorandum of Understanding: Within the DoD



## Data Sharing Agreements

# Summary

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- You should now be able to:
  - Define the role of the TMA Privacy Office in authorizing the use and disclosure of MHS data owned and/or managed by TMA
  - Explain the current DUA process, and the use of BAAs and Interagency Agreements
  - Identify developments in the data sharing restructuring initiative



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## Data Sharing Agreements

# Resources

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- DoD 6025.18-R, “DoD Health Information Privacy Regulation”, January 24, 2003
- DoD 8580.02-R, “DoD Health Information Security Regulation”, July 12, 2007
- To subscribe to the TMA Privacy Office E-News, go to:  
<http://www.tricare.mil/tma/privacy/maillinglist.aspx>
- E-mail [dua.mail@tma.osd.mil](mailto:dua.mail@tma.osd.mil) for subject matter questions



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