



# TMA Privacy Office Information Paper

Records Management ♦ FOIA ♦ DUAs ♦ HIPAA Compliance ♦ Privacy Act/System of Records ♦ PIAs



## RELEASE OF PERSONALLY IDENTIFIABLE INFORMATION TO CONGRESS OR CONGRESSIONAL OFFICES

HIPAA Privacy ♦ June 2010

This paper provides guidance on release of Personally Identifiable Information (PII), including protected health information (PHI), to members of Congress and Congressional offices.

### ***I. Member Acting on Behalf, and at the Request, of the Individual to Whom the Information Pertains***

- A. The Military Health System (MHS) may disclose PII to a Member of Congress (including a staff member acting on the Member's behalf) inquiring about an individual at the request of that individual. Disclosures at request of a third party (e.g., spouse, family member, friend) are not permitted, unless the individual signs a written authorization (see below), or unless the third party has legal authority to act for the individual (e.g. a parent of a minor, or a legal guardian).
- B. Special rules apply if the PII to be disclosed includes individually identifiable health information, but only if the MHS maintains that information to furnish health care by a military treatment facility or through a provider network of the TRICARE Management Activity (TMA) managed care support contractors. This information is called protected health information (PHI) in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 CFR Part 164).
  1. PHI generally does not include health information in DoD personnel files not maintained by the MHS for health care purposes.
  2. When in doubt, assume that health information needed to respond to Congressional inquiries directed to the MHS constitutes PHI.
- C. The following special rules apply when responding to a Congressional inquiry involves disclosure of PHI:
  1. The individual must authorize the release of his or her PHI. Without a signed authorization form, any response disclosing PHI should only be issued directly to the individual and not to the Congressional office. In this case, the Congressional Office should be informed that the response was sent directly to the individual in accordance with the HIPAA Privacy Rule and the DoD regulation implementing that rule (DoD 6025.18-R).

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2. If the information is to be sent to the Congressional Office, the individual should first be asked to complete and sign a valid authorization form such as a DD Form 2870, Authorization for Disclosure of Medical or Dental Information. The individual's social security number need not be included on the authorization form if it is not necessary to locate the information to be released.
3. HIPAA Privacy Rule authorization forms other than DD Form 2870 may be accepted if the requirements of DoD 6025.18-R (para C5) are satisfied, as explained below.

#### ***II. HIPAA Privacy Rule Requirements for an Authorization to Release Protected Health Information in the absence of the DD Form 2870***

- A. When an individual's authorization is required to release PHI, the request must be in writing and include the following:
  1. The name of the individual to whom the information pertains.
  2. A description of the information to be released that identifies the information in a specific and meaningful fashion. An authorization to release psychotherapy notes must be made separately and may not be combined with an authorization to release any other type of information.
  3. The name, or other specific identification, of the person(s), class of persons, or office designation(s) authorized to release the information.
  4. The name or other specific identification of the person(s), class of persons, or office designation(s) to whom the MHS may release the information requested.
  5. A description of each purpose of the request. A statement "at the request of the individual" is sufficient when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.

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6. An expiration date or event that relates to the individual or the purpose of the disclosure.
  7. The signature of the individual, or someone with the authority to act on behalf of the individual (e.g., a parent of a minor or a guardian), and date signed.
  8. A statement that the individual has the right to revoke the authorization in writing except to the extent that use or disclosure in reliance on it has already occurred, and a description of how the individual may revoke the authorization (e.g., to whom the revocation is provided).
  9. A statement that MHS may not condition treatment, payment, enrollment, or eligibility for benefits based on the individual completing an authorization.
  10. A statement that information disclosed pursuant to the authorization may no longer be protected by Federal laws or regulations and may be subject to re-disclosure by the recipient.
- B. Photocopies, scanned documents, or faxes of authorizations are acceptable after the validity of the form has been verified.

### *III. Congressional Committee Inquiry about a Matter within Its Jurisdiction*

- A. In accordance with the Privacy Act of 1974, the MHS may provide records, without the consent of the individual to whom they pertain, to a member of Congress, or to a Congressional Committee if the records relate to a matter within the Committee's jurisdiction. See DoD 5400.11-R (para C4.2.9). If, however, the records contain PHI, then the TMA Office of General Counsel should be consulted before any PHI is released.
- B. All requests must be confirmed as to their validity and right of the requestors to access the information before it is disclosed.
- C. Records may also be disclosed to the Government Accountability Office (GAO) in the course of its official activities.

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- D. Each time a record is disclosed to a member of Congress, a Congressional Committee, or to the GAO, the disclosure must be reported to the appropriate MHS Privacy Officer, who should log the disclosure to enable responding to any subsequent request for an accounting of disclosures by the individual under the HIPAA Privacy Rule.
  - 1. This requirement does not apply when individual authorizations are obtained.
- E. Those disclosures made on the TMA level are to be reported to the TMA Privacy Office.

If you have any questions about any of the information above, please contact the TMA Privacy Office at [privacymail@tma.osd.mil](mailto:privacymail@tma.osd.mil).

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