



# TMA Privacy Office Information Paper

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



## THE PRIVACY RULE AND DOCUMENTATION

HIPAA Privacy ♦ December 2005

### PURPOSE

While documentation rules are not new to health care, the Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information (IIHI); Final Rule adds additional requirements for the Military Health Systems (MHS) to ensure the safeguarding of patients' rights. The DoD Health Information Privacy Regulation, DoD 6025.18-R, C14.10, and the HIPAA Privacy Rule, 45 CFR 164.530 (i), require that the MHS and its Covered Entities (CE) document their implementation of the Privacy Rule in order to ensure accountability for the covered entity's privacy practices. For example, policies, procedures and other documentation are needed to support a decision made by the covered entity in an investigation of a patient's complaint and to demonstrate compliance with the Rule.

### POLICY

Policies and procedures related to the use, disclosure, and protection of IIHI must be established and maintained in either written or electronic form. When communication is required to be in writing, either the original or an electronic version (Portable Document Format (PDF)) of the communication must be maintained. Finally, all HIPAA related actions, activities, or designations are required to be documented in written or electronic form and must be maintained for a period of six years.

### DOCUMENTATION RELATED TO PATIENTS' RIGHTS

The Privacy Rule confers certain rights to individuals with regard to their Protected Health Information (PHI). The MTF, DTF and other DoD covered entities are responsible for ensuring the protection of PHI in support of these rights and for documenting its implementation and compliance with those protections. These include:

- Notice of Privacy Practices (NoPP). The NoPP provides individuals with information describing how the MTF, DTF, or DoD covered entity may use and disclose PHI about an individual and how an individual can obtain access to this information. MTFs and DTFs must obtain a written acknowledgement from the patient that acknowledges receipt of the notice. This acknowledgement of receipt is completed using the NoPP Acknowledgement label which is attached to the patient's medical and dental record. The label must be signed by the patient or the patient's representative to acknowledge receipt.

PrivacyMail@tma.osd.mil ♦ [www.tricare.mil/tma/privacy](http://www.tricare.mil/tma/privacy)

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- Requests to Inspect and Copy. Individuals have a right to request access to their PHI, either through direct inspection or by obtaining a copy. All patient requests and covered entity approval or denial of access, allowed under specific circumstances, must be documented in writing. The NoPP informs patients of the requirement to request inspection or copies in writing.
- Requests to Amend PHI. Individuals have a right to request an amendment to the PHI in their medical record or other “designated record set” if they believe the record is inaccurate or incomplete. The written request and documentation of all actions taken must be maintained and attached to the affected sections of the medical record.
- Requests to restrict use or access to PHI. Individuals have a right to request restrictions on the use or disclosure of the PHI in their medical record or other “designated record set.” Requests must be made in writing. The decision to agree to or deny the request must also be made in writing along with any notification or agreement to terminate a restriction.
- Requests for Confidential Communications. Individuals have a right to request that their MTFs or covered entities provide communications of PHI by alternative means or at alternative locations. The MTF or covered entity is required by the Rule to permit requests of these types and shall accommodate those requests that are reasonable. MTFs, DTFs and other DoD covered entities must document requests and their response in writing.
- Requests for Accounting of Disclosures. Individuals have a right to request and receive an accounting of disclosures made to other persons or entities except as specified in DoD 6025.18-R. MTFs, DTFs, and other DoD covered entities must document information relating to disclosures subject to an accounting and the written accounting that is provided to the individual. When informing an individual of delays or the temporary suspension of their right to an accounting of disclosures, it must be made in writing.

MTFs, DTFs, and other DoD covered entities must document and display the name(s) and title(s) of the person or office responsible for receiving and processing the above requests.

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### DOCUMENTATION RELATED TO POLICIES AND PROCEDURES

MTFs, DTFs, and other DoD covered entities must document the policies and procedures used to implement DoD 6025.18-R. This ensures that decisions affecting individuals' rights and privacy interests are made thoughtfully, not on an ad hoc basis. Well maintained written policies facilitate workforce training and compliance with HIPAA Privacy Standards. The Rule requires covered entities to modify policies and procedures to comply with changes in the law. Covered entities may make other necessary changes to policies and procedures provided that the changes comply with the Rule. If a change in practices effects provisions in the execution of the privacy program, local training must be revised to reflect the change. The revised training must be completed prior to implementing the change and documented accordingly.

### DOCUMENTATION RETENTION PERIOD

The retention period requirement only applies to the documentation required by the Rule, for example, keeping a record of accounting for disclosures or copies of policies and procedures. Medical record retention periods are set by other laws and Service regulation.

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