



TMA Privacy Office Information Paper

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MILITARY COMMAND EXCEPTION AND DISCLOSING PHI OF ARMED FORCES PERSONNEL

HIPAA Privacy ♦ September 2010

I. Supporting Policies for this Information Paper

- A. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, C7.11) and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR 164.512(k)) states that a HIPAA covered entity may use and disclose the protected health information (PHI) of Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission. Patient authorization is not required for this disclosure.
 1. DoD 6025.18-R, C7.11.1.1 provides that covered entities – both military treatment facilities (MTFs) and civilian providers – are permitted to disclose PHI to military commanders based on this exception.
 2. DoD 6025.18-R, C7.11.1.2 identifies appropriate military command authorities.
 3. DoD 6025.18-R, C7.11.1.3 states the purposes for which PHI may be used or disclosed.
- B. Directive-Type Memorandum 09-006 (DTM 09-006¹), “Revising Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Military Personnel,” dated July 2, 2009, provides guidance regarding disclosing PHI related to mental health or substance abuse problems.
- C. The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act, 42 U.S.C. 290dd-2, establishes special confidentiality rules for disclosing information about alcohol and substance abuse treatment. See DoD 6025.18-R, C8.9.

II. Definitions Associated with the Military Command Exception

- A. **Covered Entity:** A health plan or a healthcare provider within the Military Health System (MHS) that transmits any health information in electronic form to carry out financial or administrative activities related to healthcare.
- B. **Disclosure:** The release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the information.



¹<http://www.dtic.mil/whs/directives/corres/pdf/DTM-09-006.pdf>



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- C. Military Health System (MHS): All DoD health plans and all DoD healthcare providers that are, in the case of institutional providers, organized under the management authority of, or in the case of covered individual providers, assigned to or employed by TMA, the Army, the Navy, or the Air Force.
- D. Protected Health Information (PHI): Information that is created or received by a covered entity and relates to the past, present, or future physical or mental health of an individual; providing payment for healthcare to an individual; and can be used to identify the individual. It excludes health information in employment records held by a covered entity in its role as employer.
- E. Use: With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

III. Frequently Asked Questions Regarding the Military Command Exception

- A. Is a patient's authorization required prior to releasing the PHI of Armed Forces Personnel to a military command authority in order to determine the impact of the member's health status on the command's military mission?

No. Under DoD 6025.18-R, C7.11.1.1, a covered entity need not first obtain authorizations from individuals who are Armed Forces personnel to use or disclose their PHI for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission. This rule applies not only to covered entities within the MHS but also to covered entities not part of or affiliated with DoD.

- B. Are all covered entities required to disclose PHI of Armed Forces Personnel when properly requested by appropriate military command authorities?

No. The Federal Register notice and DoD 6025.18-R, C7.11.1.1 provide that covered entities "may" disclose PHI of Armed Forces Personnel, indicating that disclosure of PHI is discretionary with the covered entity.





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C. What activities qualify as “military mission”?

As provided in DoD 6025.18-R, C7.11.1.3, the “military mission” purposes for which PHI may be used or disclosed include:

1. Determining the member’s fitness, including compliance with standards and activities in specified DoD Directives, and similar requirements;
2. Determining fitness to perform any particular mission, assignment, order, or duty, including compliance with any actions required as a precondition to performance thereof;
3. Carrying out comprehensive medical surveillance activities (see DoD Directive 6490.02E);
4. Reporting on casualties in connection with a military operation or activity according to applicable military regulations or procedures; and
5. Carrying out any other activity necessary to the proper execution of the military mission.

D. Who qualifies as an “appropriate military command authority”?

Appropriate military command authorities include commanders who exercise authority over an individual member of the Armed Forces, or other person designated by such a commander to receive PHI to carry out an activity under the authority of that commander. DoD 6025.18-R,C7.11.1.2.1. This provision does not include all persons in a position of authority over the Service member. To qualify as an appropriate military command authority, the Commanding Officer (CO) or his/her designee who requests access to a member’s PHI generally must be in the individual’s chain of command.

E. What PHI should be provided in response to proper requests by appropriate military command authorities?

Any disclosure must be limited to the minimum necessary PHI to accomplish assessment of the impact of the member’s health status on the military mission. Disclosure of PHI to command authorities should only be on a “need-to-know” basis. See also the following Q&A regarding mental health disclosures.



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- F. Do special rules apply to disclosure of PHI relating to mental health or substance abuse problems?

Yes. DTM 09-006 establishes two policies:

1. “Health care providers shall balance notification of a member’s commander with operational risk management, as with any other health concern.”
2. PHI disclosure “shall provide the minimum amount of information to satisfy the purpose of the disclosure. In general, this shall consist of the diagnosis; a description of the treatment prescribed or planned impact on duty or mission, recommended duty restrictions, and the prognosis.”

In contrast to the HIPAA Privacy Rule, the ADAMHA regulations broadly permit “interchange of that information within the Armed Forces,” however; the disclosure of PHI must satisfy both ADAMHA and the HIPAA Privacy Rule. Therefore, the fact that disclosure by an MTF provider to a commander might be a permitted “interchange … within the Armed Forces” is not sufficient; the disclosure must separately comply with the HIPAA military command exception.

- G. What MTF policies and procedures regarding this type of use and disclosure provision should be established?

1. Maintain an approved roster of commanders and other persons who may access unit members PHI on the commander’s behalf.
2. Develop criteria for requests to ensure release of only the minimum necessary PHI (e.g., cases requiring a clinical summary rather than the entire medical record).
3. Establish a policy to designate authority, within an MTF, for release of PHI.
4. Ensure proper training of personnel on the types of information that qualify as PHI and the circumstances that require an accounting for PHI disclosure.



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5. Ensure that local policies and procedures include consideration of circumstances that duty crews encounter. Educate personnel on local policies concerning routine PHI requests from Commanders necessary for military mission impact determinations.

H. Does the MTF have to account for these types of disclosures?

The MTF is required to account for the disclosure of PHI of Armed Forces Personnel made to command authorities. See DoD 6025.18-R, C13. However, if the Service member voluntarily provides his/her health information to a command authority, this is not an accountable disclosure and the MTF is not required to formally account for it.

I. Are Command Authorities allowed access to PHI regarding a Service member family member if a situation with that beneficiary negatively impacts the Service member's ability to perform his/her military mission?

No. This military command exception is only valid for Armed Forces personnel. PHI of family members or other categories of beneficiaries is never shared with Command Authorities without a proper HIPAA-compliant authorization.

J. What resources are available to help with making a determination regarding disclosure of PHI of Armed Forces Personnel to command authorities?

In addition to the DoD issuances cited above, be sure to also utilize your local legal office, MTF Privacy Officer, and Service Privacy Representative.

K. Are medical appointment reminders concerning Armed Forces personnel permitted to be shared with Command Authorities?

Yes. Command Authorities and/or their designee may require notification of medical appointments for Armed Forces personnel to determine fitness for duty and to ensure proper execution of the military mission, such as assignment coverage. Medical appointment notifications include treatment reminders (physicals, immunizations, laboratory, etc.) and notifications of missed and cancelled appointments. MHS employees are required to keep the information disclosed to Command Authorities regarding medical appointments of Armed Forces personnel to the minimum necessary in accordance with DoD 6025.18-R, C8.2.