



# TMA Privacy and Civil Liberties Office Information Paper

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



## DISCLOSURE OF PHI TO DOD SAFETY OFFICES

HIPAA Privacy ♦ February 2012

### *I. Supporting Policies for this Information Paper*

- A. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR Parts 160 and 164) governs use and disclosure of protected health information (PHI).
- B. The DoD Health Information Privacy Regulation (DoD 6025.18-R) implements the HIPAA Privacy Rule within the Military Health System (MHS).
- C. The Privacy Act of 1974 (Privacy Act), 5 USC 552a, governs disclosure of personally identifiable information (PII) - which includes PHI.
- D. The DoD Privacy Program (DoD 5400.11-R), implements the Privacy Act among the DoD Components.
- E. DoD Instruction 6055.07, "Mishap Notification, Investigation, Reporting, and Record Keeping," June 6, 2011.

### *II. Definitions Associated with Disclosure of PHI to DoD Safety Offices*

- A. Covered Entity: A health plan or a healthcare provider within the 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.
- 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, TRICARE Management Activity (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. PHI 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.

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### *III. Background Information Regarding Disclosure of PHI to DoD Safety Offices*

- A. DoD is responsible for protecting its personnel from accidental death, injury or occupational illness. Therefore, DoD is subject to Occupational Safety and Health Administration (OSHA) reporting requirements when workplace accidents occur.
- B. DoD safety offices are not covered entities as defined by HIPAA and, therefore, are required to comply only with the Privacy Act.
- C. Military treatment facilities (MTFs), individual health care providers within the MHS, electronic medical records, and other MHS databases maintained by TMA are sources of reporting data on injury-causing accidents.
  - 1. MHS organizations are advised to, as appropriate, disclose medical data to safety professionals at military bases and installations.
  - 2. Failure to properly report workplace accidents to MHS medical databases can lead to:
    - a. Incomplete DoD Component accident databases, and
    - b. Discrepancies between medical databases and Service safety databases.

### *IV. Guidance Regarding Disclosure of PHI to DoD Safety Offices under DoD 6025.18-R*

- A. MHS covered entities are generally prohibited from disclosing PHI of TRICARE beneficiaries to non-covered entities, such as DoD safety offices, unless an exception applies under DoD 6025.18-R. Two of these exceptions are discussed below:
  - 1. Required by Law. Paragraph C7.1.1 of DoD 6025.18-R permits disclosure of PHI that is required by law and the disclosure complies with and is limited to the relevant requirements of such law.
    - a. “Required by law” for this purpose includes any mandate contained in a DoD issuance that requires a covered entity to make a disclosure. See DoD 6025.18-R, DL1.1.31.2.
    - b. DoDI 6055.07 mandates disclosure to DoD safety offices for purposes required by law.
    - c. The alternative public health exception (discussed below) needs to be considered only for accident-related PHI disclosures not required by DoDI 6055.07 or other applicable law.

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2. Public Health. Paragraph C7.2 of DoD 6025.18-R permits MHS providers to disclose PHI for the following public health activities:
  - a. Disclosures to “public health authorities” authorized to receive such information to carry out public health activities including: reporting disease or injury, conducting public health investigations, and medical surveillance. See paragraph C7.2.1.
  - b. Disclosures to a DoD workforce member’s employer, i.e. DoD, if all of the following requirements are met:
    - i. The provider has been asked to evaluate the individual for purposes of either medical surveillance of the workplace or determining whether the individual has a work-related illness or injury.
    - ii. The PHI disclosed consists of findings concerning a work-related illness or injury or workplace-related medical surveillance.
    - iii. DoD needs the findings from the provider in order to comply with its legal reporting obligations (e.g. OSHA reporting).
    - iv. The individual receives a written notice that PHI will be disclosed to DoD (or, if the care is provided on the DoD work site, the notice may be prominently posted at that location).

- B. Minimum Necessary. The above exceptions only permit the MHS to disclose the minimum PHI needed for purposes of the exception.
  1. The public health exception is subject to the general minimum necessary standard of DoD 6025.18-R, C8.2.1.
  2. Under DoD 6025.18-R, the required by law exception is not subject to the general minimum necessary standard (see paragraph C8.2.2.6), but the exception itself limits disclosure to only what the law requires.