



# TMA Privacy and Civil Liberties Office Guidance



## BUSINESS PRACTICES FOR DOD/VA SHARING

HIPAA Privacy ♦ August 2005

### Purpose

To provide Military Treatment Facilities (MTF) in the Military Health System (MHS) an interpretation of the business practices for sharing of Protected Health Information (PHI) under the Memorandum of Understanding (MOU) established between the Department of Veteran Affairs (DVA) and the Department of Defense (DoD).

### Authorities

It is critical that these authorities be administered by Department (DVA and DoD) or Administration (Veterans Health Administration (VHA) and TRICARE Management Activity (TMA) as indicated below. Some are only applicable between the health care functions (covered entities under Health Insurance Portability and Accountability Act (HIPAA) and/or their business associates and some apply to all components of the Departments.

Department of Defense	Business Practices
<b>i.</b> <i>Shall provide VHA with information necessary for VHA to provide medical treatment to veterans or transitioning military personnel when appropriate (45 CFR § 164.506 (c)(2)), and/or</i>	The MTF shall provide necessary medical information to the VHA when an Active Duty Service member is separating/departing from the military in pursuant of Veterans benefits.
<b>ii.</b> <i>Shall share information with VHA for payment purposes when appropriate (45 CFR §164.506(c) (3)), and/or</i>	“Same As Above”
<b>iii.</b> <i>Shall disclose PHI when appropriate to VHA for its health care operations, such as for purposes of health care quality assessment and improvement activities (45 CFR §164.506(c)(4)), and/or</i>	“Same As Above”
<b>iv.</b> <i>Shall disclose information to VHA as necessary and appropriate to coordinate the covered functions of their programs or to improve administration and management relating to the functions (45 CFR § 164.5 12(k)(6)(ii)), and/or</i>	“Same As Above”

<b>Department of Defense</b>	<b>Business Practices</b>
<b>v.</b> <i>Shall provide a service member's information to VA, including all Administrations, pursuant to prior written authorization by the service member (45 CFR § 164.508), and/or</i>	If a service member signs a HIPAA compliant authorization permitting the release of their PHI prior to their separation from the military the MHS may release information at the time the form is signed.
<b>vi.</b> <i>Shall disclose information to VA, including all Administrations, when such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law, or as necessary to comply with law relating to disability compensation for service-related injuries or illnesses or other title 38 benefits. (45 CFR §164.512(a)(1); 45 CFR § 164.512(1); 38 U.S.C. § 5106).</i>	The MHS can share information with the Veterans Administration on the request of the Secretary of the Veterans Administration when proper legal authority allowing for such a disclosure is shown.  TMA suggests review by MHS legal counsel for verification of these required by law requests.
<b>vii.</b> <i>Shall provide information to VA upon the separation or discharge of an individual from military service for the purpose of determining eligibility for, or entitlement to, benefits under laws administered by the Secretary of Veterans Affairs (45 CFR §164.512(k)(1)(ii)).</i>	The MTF shall provide necessary medical information to the VHA when an Active Duty Service member is separating/departing from the military in pursuant of Veterans benefits.

<b>Department of Veterans Affairs</b>	<b>Business Practices</b>
<b>i.</b> <i>Shall provide DoD TRICARE with information necessary for DoD TRICARE to provide medical treatment to veterans or transitioning military personnel when appropriate (45 CFR §164.506(c)(2)), and/ or</i>	Veterans Administration shall provide information to the MHS upon request from the MTF once a shared treatment relationship has been established.
<b>ii.</b> <i>Shall share information with DoD TRICARE for payment purposes when appropriate (45 CFR §164.506(c)(3)), and/or</i>	Veterans Administration shall provide information to the MHS for payment activities related to an established treatment relationship.
<b>iii.</b> <i>Shall disclose protected health information when appropriate to DoD TRICARE for its health care operations, such as for purposes of health care quality assessment and improvement activities (45 CFR §164.506(c)(4)), and/or</i>	Veterans Administration shall provide information to the MHS for healthcare operations related to an established treatment relationship.
<b>iv.</b> <i>Shall disclose information to DoD TRICARE as necessary and appropriate to coordinate the covered functions of their programs or to improve administration and management relating to the functions. (45 CFR § 164.512(k)(6) (ii);), and/or</i>	“Same As Above”
<b>v.</b> <i>Shall provide a veteran or service member's information to DoD, including all Services, pursuant to prior written authorization by the service member (45 CFR § 164.508).</i>	If a veteran signs a HIPAA compliant authorization permitting the release of their PHI Veterans Administration may supply that information to the MHS without existence of a joint or shared treatment relationship existing.
<b>vi.</b> <i>Shall disclose information to DoD, including all Services when such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law (45 CFR §164.512(a)(1), and/or</i>	Veterans Administration will provide PHI to the MHS when the MHS can present legal authority for the disclosure.

<b>Department of Veterans Affairs</b>	<b>Business Practices</b>
<b>vii.</b> <i>Via VBA, shall make the determinations as to the service- connected status of veterans, as well as the degree of disability associated with a service-connected disability (38 USC §7703).</i>	

<b>Other Disclosure Authorities</b>	<b>Business Practices</b>
<b>i.</b> <i>Each Department shall ensure that appropriate Privacy Act authority exists to make the disclosures covered by this MOU.</i>	
<b>ii.</b> <i>Authority exists under 38 U.S.C. § 7332, and 42 U.S.C. § 290dd-2, where applicable, to make the disclosures covered by this MOU.</i>	TMA suggests consultation with MHS legal counsel to confirm authorities for these disclosures.
<b>iii.</b> <i>This MOU recognizes authority for a request by DoD for information from VA under 38 U.S.C. § 570 1(b) (3).</i>	TMA suggests consultation with MHS legal counsel to confirm authorities for these requests.
<b>iv.</b> <i>This MOU does not address the sharing of medical quality assurance information protected by 10 U.S.C. § 1102 and 38 U.S.C. § 5705.</i>	TMA suggests consultation with MHS legal counsel to confirm authorities.

<b>Other Organizations</b>	<b>Business Practices</b>
<i>Organizations which, or individuals who, request the PHI of hospitalized service members in order to help them apply for benefits, may not receive PHI unless a HIPAA- compliant authorization is completed by the individual service member and provided to VHA or DoD TRI- CARE, or other legal authority for the disclosure exists. DoD and VA may disclose other individually identifiable information consistent with applicable legal requirements.</i>	Veterans support organizations such as the Disabled American Veterans and Veterans of Foreign Wars, to name two of many, often request PHI of hospitalized Service members to help these individuals identify and apply for Veterans Administration benefits they are entitled to receive. In order to provide information to these organizations, a HIPAA compliant authorization must be signed by the Service member allowing the disclosure.

## **Additional Responsibilities**

<b>Department of Defense</b>	<b>Business Practices</b>
<b>i.</b> <i>Will ensure that each of the Services identifies a point of contact (POC) to facilitate coordination of issues related to this program.</i>	

Department of Defense	Business Practices
<p><b>ii.</b> <i>Will ensure that VA receives a list of all service members who have served in a Theater of Operations so that VA will be able to readily document all service members who are eligible for VA's special two- year treatment authority for certain combat veterans.</i></p>	<p>The VA provides health care services to Veterans with combat services after November 11, 1998 for a period of 2 years beginning on the date of their separation from active military service. Veterans, including activated Reservist and National Guard members, are eligible if they served on active duty in a theater of operations during a period of war after the Gulf War or in combat against a hostile force during a period of "hostilities" after November 11, 1998 and have been discharged under other than dishonorable conditions.</p> <p>Public Law 105-396 (Title 38 USC 1710(d)(D) applies.</p> <p>The identification and reporting of the identities of service members qualifying under this law is a personnel function, not a medical responsibility. Coordination of this reporting liaison for this population of individuals needs to take place between the VA and the appropriate release authorities in each military service component.</p>

Department of Veterans Affairs	Business Practices
<p><b>i.</b> <i>Will ensure that VHA and VBA identify points of contact from each program to facilitate coordination with DoD on issues related to the benefit application and discharge planning processes.</i></p>	
<p><b>ii.</b> <i>Will coordinate the role of VHA in the rapid processing of service members being medically retired/ separated.</i></p>	
<p><b>iii.</b> <i>Will provide reports to DoD on veterans' health care issues and the number of service members treated.</i></p>	
<p><b>iv.</b> <i>Will expedite enrollment of service members in the VA health care system.</i></p>	
<p><b>Issue Resolution:</b>  <i>Throughout the course of this agreement, issues such as scope of coverage of this MOU, interpretation of its provisions, unanticipated technical matters, and proposed modifications can be expected. The Departments agree to appoint their respective points of contact and to work together in good faith to resolve such issues in a manner that is fair, equitable, and supportive of the objectives of VA/ DoD information sharing.</i></p>	<p><b>The POC for DoD:</b>  TMA Privacy Officer</p> <p><b>Written Correspondence:</b> TMA Privacy Office  5111 Leesburg Pike  Suite 810A  Falls Church, VA 22041</p> <p><b>Email:</b> PrivacyMail@tma.osd.mil</p>