



# TMA Privacy and Civil Liberties Office Information Paper



## USES AND DISCLOSURES OF PHI IN EMERGENCY SITUATIONS

HIPAA Privacy ♦ January 2012

### **I. Supporting Policies for Disclosures in Emergency Situations**

- A. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule establishes requirements regarding uses and disclosures of protected health information (PHI) in emergency situations.
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R) implements the HIPAA Privacy Rule for the Military Health System (MHS).

### **II. Definitions Associated with Disclosures in Emergency Situations**

- 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 revealing in any other manner of PHI outside the entity holding the information.
- C. Emergency: Situation that requires immediate intervention to prevent the loss of life, limb, sight, or body tissue, or to prevent undue suffering.
- D. 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.
- E. Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained by electronic or any other form or medium, except as otherwise contained in employment records held by a covered entity in its role as an employer.
- F. Treatment: The provision, coordination, or management of healthcare and related services by one or more healthcare providers, including the coordination or management of healthcare by a healthcare provider with a third party; consultation between healthcare providers relating to a patient; or the referral of a patient for healthcare from one healthcare provider to another.
- G. Use: With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

### **III. Guidance Regarding Uses and Disclosures of PHI in Emergency Situations**

- A. Generally, a covered entity may use or disclose PHI when the individual is informed in advance and has the opportunity to agree to or object to the disclosure.
- B. Emergency Treatment Situations. If an individual cannot reasonably object to using or disclosing his or her PHI, a covered healthcare provider may, in the exercise of professional judgment, use or disclose the individual's PHI under the following circumstances:
  - 1. If it is determined that such disclosure is in the individual's best interest, and
  - 2. If the disclosure is made to a person directly involved in the individual's health care and includes only the minimum necessary PHI. This includes disclosures made to notify, or assist in notifying, the individual's family member or a personal representative, of the individual's location, general condition, or death.
- C. Facility Directories. Covered entities maintaining a directory of patients can inform anyone who inquires about the individual whether the individual is at the facility, their location in the facility, and general condition.
  - 1. When possible, covered entities should provide the individual with an opportunity to object to uses or disclosure for directory purposes.
  - 2. For emergency treatment, a covered entity may use or disclose some or all of the PHI for the facility directory, if the disclosure is:
    - a. Consistent with any known prior preference of the individual.
    - b. In the individual's best interest as determined by professional judgment.
- D. Disaster Relief Purposes. A covered entity may use or disclose PHI to entities authorized by law to assist in disaster relief efforts – such as the American Red Cross - for coordination purposes.
  - 1. The individual should be given the opportunity to agree or disagree with emergency uses and disclosures if the covered entity, in the exercise of professional judgment, determines that this choice does not interfere with the ability to respond to the emergency circumstances.
- E. Reporting Crime in Emergencies.
  - 1. A covered provider furnishing emergency healthcare at a location other than that of the covered entity, may disclose PHI to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
    - a. The commission and nature of a crime.
    - b. The location of such crime or of the victim(s) of such crime; and
    - c. The identity, description, and location of the perpetrator of such crime.
  - 2. If a covered healthcare provider believes that the medical emergency is the result of abuse, neglect, or domestic violence, then any disclosure for law enforcement purposes is subject to applicable rules found under paragraph C7.3 of DoD 6025.18-R.
- F. Notice of Privacy Practices. In an emergency treatment situation, a covered healthcare provider should furnish the individual with a Notice of Privacy Practices as soon as reasonably practicable.

G. Restriction Requests.

1. A covered entity that agrees to a restriction request may use or disclose the restricted PHI if it is needed to provide the emergency treatment.
2. Restricted PHI disclosed to a healthcare provider for emergency treatment may not be further used or disclosed.