



TMA Privacy and Civil Liberties Office Information Paper



THE MINIMUM NECESSARY RULE

HIPAA Privacy ♦ January 2012

I. Supporting Policies for the Minimum Necessary Rule

- A. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 CFR 164.514(d)(1)) establishes the requirements for limiting the use, disclosure and request of protected health information (PHI) by covered entities to the minimum necessary.
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, C8.2) implements this part of the HIPAA Privacy Rule within the Military Health System (MHS).

II. Definitions Associated with the Minimum Necessary Rule

- 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. 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. Minimum Necessary: The minimum amount of PHI that is reasonably needed to achieve the purpose of a requested use, disclosure or request for PHI.
- E. Protected Health Information (PHI): Information that is created or received by a covered entity and related to the past, present, or future physical or mental health of an individual; providing payments 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.
- F. 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 for the Minimum Necessary Rule

- A. A covered entity must make reasonable efforts to limit the use, disclosure, or request of PHI to the minimum necessary to accomplish the intended purpose of use, disclosure, or request.
- B. This does not apply to:
 - 1. Disclosures to or requests by a healthcare provider for treatment.
 - 2. Disclosures to the Secretary of Health & Human Services.
 - 3. Uses and disclosures for purposes of a medical training program.
 - 4. Uses or disclosures to the individual.
 - 5. Uses or disclosures authorized by the individual or a personal representative.
 - 6. Uses or disclosures required by law.
- C. Minimum Necessary Uses, Disclosures and Requests of PHI for Non-Treatment Purposes.
 - 1. For routine disclosures and requests, a covered entity should establish policies and procedures that limit the PHI disclosed and requested to the amount reasonably necessary.
 - 2. For non-routine disclosures and requests, a covered entity should:
 - a. Develop criteria to limit the PHI disclosed and requested to the amount reasonably necessary, and
 - b. Review each disclosure and request individually in accordance with such criteria.
- D. Reasonable Reliance. Under certain circumstances, a covered entity may reasonably infer that a requested disclosure is to the minimum necessary when the request is made by:
 - 1. A public official or agency for a disclosure permitted under paragraph C7.4 of DoD 6025.18-R (45 CFR 164.512(d)).
 - 2. Another covered entity.
 - 3. A workforce member or business associate of the covered entity for the purpose of providing professional services to the covered entity; or,
 - 4. An individual requesting the information for research purposes and who provides proper documentation that complies with the applicable requirements.