



TMA Privacy and Civil Liberties Office Information Paper



USES AND DISCLOSURES OF PHI FOR HEALTH OVERSIGHT ACTIVITIES

HIPAA Privacy ♦ September 2011

I. Supporting Policies for Health Oversight Activities

- A. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR 164.512(d)) provides guidance for using and disclosing protected health information (PHI) to a health oversight agency for activities authorized by law.
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, C7.4) implements that part of the HIPAA Privacy Rule within the Military Health System (MHS).

II. Definitions Associated with Uses and Disclosures of PHI for Health Oversight Activities

- 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. Health Oversight Agency: An agency or authority of the United States, a State, territory, political subdivision of a State or territory, or an Indian tribe, or a person or entity with legal authority to oversee the healthcare system or Government programs in which health information is necessary and relevant.
 1. Health oversight agencies within the MHS include any DoD entity authorized to oversee the MHS with respect to matters of:
 - a. Quality of care;
 - b. Risk management;
 - c. Program integrity;
 - d. Financial management;

- e. Standards of conduct; or
 - f. The effectiveness of the MHS in carrying out its mission.
- 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): 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 Uses and Disclosures of PHI for Health Oversight Activities

- A. Permitted Disclosures. A covered entity may disclose PHI without patient authorization to a health oversight agency for activities authorized by law, including:
- 1. Audits;
 - 2. Civil, administrative, or criminal investigations;
 - 3. Inspections;
 - 4. Licensure or disciplinary actions;
 - 5. Civil, administrative, or criminal proceedings; or
 - 6. Other activities necessary for appropriate oversight of:
 - a. The healthcare system;
 - b. Government benefits programs where the PHI is relevant to beneficiary eligibility;
 - c. Entities where PHI is necessary for determining compliance with:
 - i. Government regulatory program standards; or
 - ii. Civil rights laws.
- B. Exceptions. A covered entity may not disclose PHI for a health oversight activity, such as an investigation, in which the individual is the subject and that investigation or other activity is not a product of or directly related to:
- 1. The receipt of health care;
 - 2. A claim for public benefits related to health care; or
 - 3. Qualification for, or receipt of, public benefits or services when a patient's health is important to the claim for public benefits or services.

- C. Joint Activities or Investigations. If a health oversight activity or investigation is conducted in conjunction with another oversight activity or investigation, relating to a claim for public benefits, but not relating to health, the combination is considered a health oversight activity.
1. Example: A State Medicaid agency working with the Food Stamps Program to investigate suspected fraud involving Medicaid and Food Stamps.
- D. Accounting of Disclosures. Unless otherwise noted under Chapter 13 of DoD 6025.18-R, disclosures of PHI to health oversight agencies must be documented and included in an accounting of disclosures upon request by the patient.