



# TMA Privacy and Civil Liberties Office Information Paper



## USES AND DISCLOSURES OF PHI FOR LAW ENFORCEMENT PURPOSES

HIPAA Privacy ♦ February 2011

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

- A. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR 164.512(f)) sets for the requirements for uses and disclosures of protected health information (PHI) for law enforcement purposes.
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, C7.6) implements the above section of the HIPAA Privacy Rule as it relates to the Military Health System (MHS).

### **II. Definitions Associated with Uses and Disclosures of PHI for Law Enforcement Purposes**

- 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. Law Enforcement Official: An officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to investigate or conduct an official inquiry into a potential violation of law; or prosecute or conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.
- 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 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. 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 Regarding Uses and Disclosures of PHI for Law Enforcement Purposes**

- A. Minimum Necessary. Except when required by law, PHI disclosures to law enforcement officials should be kept to the minimum necessary as determined by the covered entity. When reasonable to do so, the covered entity may rely upon the representations of the law enforcement official as to what information is the minimum necessary for their lawful purpose.
- B. PHI may be disclosed to a law enforcement official to report certain wounds - such as gunshot, stab wounds or other violent injuries - or other physical injuries, as required by law.
1. See Paragraph D.3 for requirements associated with wounds or injuries believed to be the result of abuse, neglect or domestic violence (including child abuse/neglect).
- C. PHI may also be disclosed to comply with the requirements of:
1. A court order or court-ordered warrant, or a subpoena or summons is sued by a judicial officer;
  2. A grand jury subpoena; or
  3. An administrative request, including an administrative subpoena or summons, a civil investigative demand, or similar process authorized under law, if the request includes or is accompanied by a written statement verifying the following criteria are met:
    - a. The information sought is relevant to a legitimate law enforcement inquiry;
    - b. The request is in writing, specific, and limited to the purpose for which the information is sought; and
    - c. The information could not reasonably be de-identified.
- D. Limiting PHI Disclosures for Identification and Location Purposes.
1. Only the following PHI may be disclosed to law enforcement officials to identify or locate a suspect, fugitive, material witness, or missing person:
    - a. Name and address,
    - b. Date and place of birth,
    - c. Social security number,
    - d. ABO blood type and Rh factor,
    - e. Type of injury,
    - f. Date and time of treatment,
    - g. Date and time of death, if applicable; and
    - h. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

2. Unless otherwise permitted, a covered entity may not disclose any PHI related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue to identify or locate an individual.
- E. **Victims of a Crime.**
1. A covered entity may disclose PHI about an individual who is or is suspected to be a victim of a crime if the individual authorizes the disclosure.
  2. The covered entity may also disclose PHI in an emergency or if the individual is incapacitated and, therefore, unable to provide authorization, if:
    - a. It is shown that the information is needed to determine whether there has been a violation of law by a person other than the victim, and the information is not intended to be used against the victim;
    - b. It is shown that immediate law enforcement activity that depends upon the disclosure would be negatively affected by waiting until the individual is able to agree to the disclosure; and
    - c. The disclosure is in the best interest of the individual as determined by the covered entity, in the exercise of professional judgment.
  3. In cases of adult abuse, neglect or domestic violence and child abuse/neglect:
    - a. Adults. A covered entity may disclose PHI related to an adult victim of abuse, neglect, or domestic violence to a government authority that is authorized by law to receive reports of such information if:
      - i. The individual agrees to the disclosure; or
      - ii. The disclosure is legally required or authorized by law and is compliant with the law, and, in the covered entity's professional judgment, the disclosure is necessary to prevent serious harm to the individual or other potential victims.
    - b. Children. A covered entity may disclose PHI related to child abuse or neglect to a government authority that is authorized by law to receive reports of such information without consent from the individual.
- F. Decedents. A covered entity may disclose PHI about a decedent to alert law enforcement of the individual's death if there is any suspicion the death may have resulted from criminal conduct.
- G. Crime Committed on Covered Entity's Premises. A covered entity may disclose PHI it believes in good faith constitutes evidence of criminal conduct that occurred on the covered entity's premises.
- H. Crime Committed off Covered Entity's Premises. A covered healthcare provider furnishing emergency health care on a location other than the covered entity's premises may disclose PHI if the disclosure appears necessary to alert law enforcement to:
1. The commission and nature of the crime;
  2. The location of the crime or of the victim(s); and
  3. The identity, description, and location of the perpetrator of the crime.