

DHA Procedures, Guidance, and Information (PGI)

DHA PGI 224 – PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

(Revised May 23, 2017)

224.1 – Protection of Individual Privacy

224.1-90 - Personally Identifiable Information (PII), Protected Health Information (PHI), and Federal Information Requirement

- (1) Procurement Directive – None
- (2) Overview – PGI 224.1-90 provides implementing language and Defense Health Agency (DHA) processes for compliance with requirements set forth in Federal Acquisition Regulation (FAR) Part 24 and Defense Federal Acquisition Regulation Supplement (DFARS) Part 224, pertaining to federal privacy and information laws, including the Health Insurance Portability Accountability Act (HIPAA) Privacy, Security and Breach Rules, 45 CFR Parts 160 and 164, as amended, issued by the Department of Health and Human Services (DHHS). This PGI provides standard language that shall be included in all purchased and non-purchased care solicitations and contracts where the contractor’s performance involves access to PII/PHI (unless those solicitations and contracts incorporate the TRICARE Manuals in their entirety, in which case this PGI does not apply).
- (3) Implementation instructions for contracts that do not incorporate the TRICARE manuals in their entirety:
 - a. Solicitations issued or contracts shall include the standard language set forth in (4) if the contractor accesses PII/PHI for any purpose during the performance of the contract.
 - b. Contracts that have incorporated some but not all of the TRICARE Manuals must be reviewed to determine if the contract includes the provisions in (3)b. i. and (3)b. ii. If any of those provisions are missing from the contract, a determination must be made of whether to incorporate the missing provisions into the contract by modification or to incorporate the standard language as provided in (4). The DHA Privacy and Civil Liberties Office (Privacy Office) should be consulted on these determinations. The TRICARE Manual sections are the following:
 - i. TRICARE Operations Manual Chapter 1, Section 5, and Chapter 19, Section 3.
 - ii. TRICARE Systems Manual Chapter 1, Section 1.1.
- (4) If the contractor’s performance involves access to PII/PHI for any purpose, the Contracting Officer (CO) shall review the “Decision Tree Matrix” (Attachment 1) to determine whether the solicitation/contract action must incorporate the language in

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[Attachment 2](http://www.health.mil/Military-Health-Topics/Privacy-and-Civil-Liberties/Privacy-Contract-Language/DHA-Standard-Contract-Language). This document is available at the link “standard contract language” on the page <http://www.health.mil/Military-Health-Topics/Privacy-and-Civil-Liberties/Privacy-Contract-Language/DHA-Standard-Contract-Language>. If it is determined that the Attachment 2 language is required, the incorporation by reference to Attachment 2 is accomplished by including the following provision in the applicable section of the solicitation/contract: “The contractor shall comply with the document entitled [‘Personally Identifiable Information \(PII\), Protected Health Information \(PHI\) and Federal Information Requirements](#),’ which is incorporated by reference in its entirety.” However, the “in its entirety” language may be replaced with “except for paragraph __,” if it is determined that a paragraph is not applicable to the contract. For example, if the contractor is determined not to be a HIPAA business associate, then the “in its entirety” language may be replaced with “except for paragraph 8, HIPAA Business Associate Provisions.”

- a. Contracts awarded by the Contracting Office, and not utilizing another Department of Defense (DoD) or Non-DoD Agency contract, shall incorporate PII/PHI language in its entirety into the applicable section of the solicitation/contract.
- b. For those solicitation/contract actions awarded by another DoD or Non-DoD Agency, on behalf of the Contracting Office, the CO shall coordinate with the respective Agency CO to determine if their contract complies with the privacy compliance requirements addressed in the PGI, including the HIPAA Rules and DoD HIPAA Issuances.
- c. The DoD / Non-DoD Agency making the award on behalf of Contracting Office:
 - i. The Contracting Office CO in coordination with the Agency CO shall determine which portions of the PII/PHI language of this PGI are applicable to the contract. If the Agency contract does not include the applicable portions, the CO shall request those portions be incorporated into solicitation/contract award. The CO may consult with the DHA Privacy Office to determine language to be incorporated.
- d. The Contracting Office making the award using another DoD / Non-DoD Agency contract:
 - i. The Contracting Office CO in coordination with the Agency CO shall determine which portions of the PII/PHI language of this PGI are applicable to the contract.
 - ii. If the Agency contract does not include applicable portions, the CO shall incorporate those portions into the solicitation/contract. The CO may consult with the DHA Privacy Office to determine language to be incorporated.

Attachments:

- 1 Decision Tree Matrix
- 2 PII/PHI/HIPAA Language