

Inspector General Information Paper

October 2021

The Department of Defense Office of Inspector General (DoD OIG), established in 1982, acts as principal advisor to the Secretary of Defense across a range of matters. In performance of its duties as principal advisor, the DoD OIG actively combats fraud, waste and abuse within the Department of Defense by conducting audits, investigations and evaluations. The Defense Health Agency (DHA) Privacy and Civil Liberties Office has received guidance inquiries regarding DHA data sharing practices with the DoD OIG. Accordingly, this Inspector General Information Paper addresses DHA disclosure of protected health information (PHI) to the DoD OIG.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called PHI, held by most health care providers and health plans and their business associates (a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity). The HIPAA Privacy Rule sets out how and with whom PHI may be shared. Affirmatively, DHA shares information, including but not limited to, PHI and other forms personally identifiable health information with the DoD OIG in certain and particular circumstances. Support for such disclosures to the DoD OIG is both evidenced in and permitted by the Law Enforcement Exception of the Health Insurance Portability and Accountability Act, and DoDM 6025.18, Implementation of the Health Insurance Portability and Accountability Act Privacy Rule in DoD Health Care Programs, March 13, 2019.

- The Defense Health Agency is a covered entity per ¶ 3.3(a)(1)(a) of DoDM 6025.18, and maintaining data in both electronic and paper format constituting PHI

subject to the provisions of HIPAA, falls under the purview and direction of HIPAA's Law Enforcement Exception.

- Under the Law Enforcement Exception of HIPAA's Privacy Rule, the DoD Office of Inspector General has the requisite authority to collect data from the Defense Health Agency. Per 45 CFR 164.512(a)(1), a covered entity may use or disclose PHI to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.
- Likewise, under DoDM 6025.18, DHA covered entities are permitted to disclose PHI for law enforcement purposes. Specifically, per ¶ 4.4(f)(1) of DoDM 6025.18, a DoD covered entity may disclose PHI for a law enforcement purpose to a law enforcement official pursuant to process and as otherwise required by law.
- DoDM 6025.18 specifically addresses the authority of the Inspector General in ¶ 3.2(a), stating, pursuant to Section 1320a-7(a)(5) of Title 5 42, U.S.C., nothing in DoDM 6025.18 shall be construed to diminish the authority of any statutory Inspector General, including such authority as provided in the Appendix of Title 5, U.S.C. also known as the "Inspector General Act of 1978."
- In consideration of the aforementioned, it is accordingly permissible and not in contravention of HIPAA for DHA PHI to be disclosed and shared with statutory Inspector General offices, including the DoD OIG, so long as the Privacy Rule's minimum necessary requirements are met, and the amount of information shared with Inspector General's Office are the minimum necessary disclosed for the Inspector General to accomplish its stated purposes.

Reference:

- DoDM 6025.18, “Implementation of the Health Insurance Portability and Accountability Act Privacy Rule in DoD Health Care Programs,” March 13, 2019
- 45 CFR Parts 160 and 164, “Standards for Privacy of Individually Identifiable Health Information; Final Rule,” December 28, 2000
- 5a U.S. Code Compiled Act 95-452 - INSPECTOR GENERAL ACT OF 1978

If you have any questions about any of the information above, please contact the DHA Privacy Office Policy mailbox at: dha.ncr.admin-mgt.mbx.dha-privacyguidance@mail.mil