

# Uses and Disclosures of Protected Health Information (PHI) - Family Members and Friends

November 2024

## I. Supporting Policies for this Information Paper

- A. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR 164.510(b)) sets forth the requirements for any covered entity that maintains a medical facility directory.
- B. The DoD Manual 6025.18 Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs implements a DoD covered entity may use or disclose PHI to a family member, other relative, close personal friend of the individual, or any other person identified by the individual.

## II. Definitions Associated with Uses and Disclosures of PHI for Family Members and Friends

- A. **Business Associate (BA):** 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.
- B. **Covered Entity (CE):** A health plan or a healthcare provider within the Military Health System (MHS) that transmits any health information in electronic form to carry out financial or administrative activities related to healthcare.
- C. **Disclosure:** The release, transfer, provision of access to, or revealing in any other manner of PHI outside the entity holding the information of covered individual.
- 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 DHA, the Coast Guard, the Army, the Navy, or the Air Force.
- E. **Protected Health Information (PHI):** Individually identifiable health information that is transmitted or maintained by electronic or any other form or medium. PHI excludes individually identifiable health information in employment records held by a CE or BA in its role as employer.
- F. **Use:** With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within

an entity that maintains such information.

### **III. Introduction**

This paper provides guidance on uses and disclosures of PHI to an individual's family members, friends, or other persons involved in the individual's care or healthcare payment. In certain circumstances, such uses and disclosures are permitted if the individual does not object or if the covered entity (CE) or its business associate (BA) reasonably concludes from the situation that the individual does not object. If the individual is not present or is incapacitated, the CE or BA may use professional judgment to disclose PHI for the individual's best interest.

#### **Discussion**

CEs or BAs may disclose PHI to an individual's family member, other relative, close personal friend of the individual, or any other person identified by the individual, the PHI directly relevant to such person's involvement with the individual's health care or payment related to the individual's health care if Sections 1 or 2, below, are satisfied.

CEs or BAs may use or disclose PHI to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death if Sections 1, 2, or 3, below, are satisfied.

#### **Section 1: Uses and Disclosures with the Individual Present**

A DoD covered entity may use or disclose the PHI if it:

- a. Obtains the individual's agreement;
- b. Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or
- c. Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.

#### **Section 2: Limited Uses and Disclosures When the Individual is Not Present**

- a. If the individual is not present, or the opportunity to agree or object to the use or
- b. disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the DoD covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose

only the PHI that is directly relevant to the person's involvement with the individual's health care or payment related to the individual's health care or needed for notification purposes.

c. A DoD covered entity may use professional judgment and its experience with common practice and guidance from respective Service regulations to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual. HIPAA allows health care providers (such as pharmacists) to give prescription drugs, medical supplies, X-rays, and other health care items to a family member, friend, or other person you send to pick them up.

d. The HIPAA Privacy Rule permits health care providers to communicate with patients regarding their health care. This includes communicating with patients at their homes, whether through the mail or by phone or in some other manner.

e. The HIPAA Privacy Rule does not prohibit covered entities from leaving messages for patients on their answering machines. However, to reasonably safeguard the individual's privacy, covered entities should take care to limit the amount of information disclosed on the answering machine.

### **Section 3: Use and Disclosures for Disaster Relief Purposes**

A DoD covered entity may use or disclose PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted to the extent that the DoD covered entity, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

*If you have any questions about any of the information above, please contact the DHA PCLO at:*  
[dha.ncr.pcl.mbx.hipaa-compliance-inquiries@health.mil](mailto:dha.ncr.pcl.mbx.hipaa-compliance-inquiries@health.mil)