

Uses and Disclosures of Protected Health Information (PHI) in Emergency Situations

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I. Supporting Policies for Disclosures in Emergency Situations

- A. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule establishes requirements regarding uses and disclosures of protected health information (PHI) in emergency situations.
- B. The DoD Manual 6025.18 Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs implements the HIPAA Privacy Rule for the Military Health System (MHS).

II. Definitions Associated with Disclosures in Emergency Situations

- A. **Covered Entity:** 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.
- B. **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.
- C. **Emergency:** Situation that requires immediate intervention to prevent the loss of life, limb, sight, or body tissue, or to prevent undue suffering.
- 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. **Treatment:** The provision, coordination, or management of healthcare and related services by one or more healthcare providers, including the coordination or management of healthcare by a healthcare provider with a third party; consultation between healthcare providers relating to a patient; or the referral of a patient for healthcare from one healthcare provider to another.
- 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. Guidance Regarding Uses and Disclosures of PHI in Emergency Situations

- A. **Emergency Circumstances.** Generally, a covered health care provider may use or disclose some or all of an individual's PHI when an individual is incapacitated, or emergency treatment is required. Disclosure of PHI is permitted for the facility's directory if such disclosure is:
1. Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider.
 2. In the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment.
- B. **Permitted Uses and Disclosures.** The covered health care provider must inform the individual and provide an opportunity to object to uses or disclosures for directory purposes when it becomes practicable to do so.
1. A DoD covered entity may, disclose to a 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.
 2. A DoD covered entity 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. Any such use or disclosure of PHI for such notification purposes must be in accordance with DoDM 6025.18, as applicable.
- C. **Uses and Disclosures with the Individual Present.** If the individual is present for, or otherwise available prior to, a use or disclosure and has the capacity to make health care decisions, the DoD covered entity may use or disclose the PHI if it:
1. Obtains the individual's agreement;
 2. Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or
 3. Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.

D. Limited Uses and Disclosures When the Individual Is Not Present.

1. If the individual is not present, or the opportunity to agree or object to the use or 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.
2. 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 to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of PHI.

E. 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 by DoDM 6025.18. The requirements in DoDM 6025.18 apply to such uses and disclosures 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.

F. Reporting Crime in Emergencies. A covered provider furnishing emergency healthcare at a location other than that of the covered entity, may disclose PHI to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

1. The commission and nature of a crime.
2. The location of such crime or of the victim(s) of such crime; and
3. The identity, description, and location of the perpetrator of such crime.

G. If a covered healthcare provider believes that the medical emergency is the result of abuse, neglect, or domestic violence, then any disclosure for law enforcement purposes is subject to applicable rules found in DoDM 6025.18.

H. Notice of Privacy Practices. In an emergency treatment situation, a covered healthcare provider should furnish the individual with a Notice of Privacy Practices as soon as reasonably practicable.

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

