



TMA Privacy and Civil Liberties Office Information Paper



REQUESTS FOR RESTRICTIONS ON THE USES AND DISCLOSURES OF PHI

HIPAA Privacy ♦ January 2012

I. Supporting Regulations for this Information Paper

- A. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 CFR 164.522(a)(1)) establishes the requirements regarding request for restrictions on the use and disclosure of protected health information (PHI).
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, C10.1) implements the above part of the HIPAA Privacy Rule within the Military Health System (MHS).

II. Definitions Associated with Requests for Restrictions on the Uses and Disclosures of PHI

- 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 revealing in any other manner of PHI outside the entity holding the information.
- C. Military HealthSystem (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.
- D. Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained by electronic or any other form or medium, except as otherwise contained in employment records held by a covered entity in its role as an employer.
- E. 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 for Requests for Restrictions on the Use and Disclosures of PHI

- A. Requesting Restrictions. An individual has the right to request – orally or in writing – a covered entity to restrict:
1. The uses and disclosures of his or her PHI to carry out treatment, payment, or healthcare operations; and
 2. Disclosures to third parties for involvement in the individual’s care.
- B. Denying Restrictions. A covered entity is not required to agree to a restriction and should deny it, if:
1. The covered entity cannot reasonably accommodate the request,
 2. It conflicts with the DoD 6025.18-R; or
 3. For other appropriate reasons.
- C. Emergency Treatment Situations. A covered entity that agrees to a restriction request may not use or disclose the PHI involved in such request except if the PHI is needed in an emergency treatment situation. The restricted PHI used in emergency treatment situations may not be further used or disclosed.
- D. Responding to Restriction Requests. A covered entity should provide a response to the restriction request as soon as practical, and should include the reason for denial, if the request is denied in whole or part.
- E. Non-Applicability. A restriction agreed to by a covered entity is not applicable to uses or disclosures permitted or required for:
1. Facility directories,
 2. Uses and disclosures for which authorization or opportunity to agree or object is not required,
 3. Access of individuals to PHI; or
 4. Accounting of disclosures.
- F. Effectiveness. A restriction will not be effective:
1. Above the management authority level that agreed to the restriction.
 - a. A request made at a specific military treatment facility (MTF) cannot be transferred to another MTF.
 - b. A request made at an MTF level is not effective throughout the entire MHS.
 2. Unless the person agreeing is authorized to do so and establishes a written record of the restriction.
- G. Terminating a Restriction. A covered entity may terminate its agreement to a restriction, if:
1. The individual agrees to or requests the termination in writing.
 2. The individual orally agrees to the termination and the oral agreement is documented;
or

3. The covered entity informs the individual in writing that it is terminating its agreement to a restriction
 - a. The covered entity shall document that the individual has been informed.
 - b. The termination will only be effective for the PHI created or received after the covered entity has informed the individual.
- H. Documentation. A covered entity that agrees to a restriction shall document the restriction in accordance with local documentation policies.