



# TMA Privacy and Civil Liberties Office Information Paper



## SPECIAL RULE FOR ALCOHOL AND DRUG ABUSE PROGRAM PATIENT RECORDS

HIPAA Privacy ♦ September 2011

### **I. Applicable Rules for Alcohol and Drug Abuse Program Patient Records**

- A. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule requires covered entities to comply with separate federal rules for alcohol and drug abuse records.
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R), implements the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule within the Military Health System (MHS). See C5.4 and C8.9 of the DoD 6025.1-R.
- C. The Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act (ADAMHA (42 USC 290dd-2)) establishes separate federal rules for the confidentiality of alcohol and drug abuse patient records.
  1. Regulations issued under ADAMHA are at 42 CFR Part 2 -
  2. Confidentiality of Alcohol and Drug Abuse Patient Records.
  3. These regulations are available at <http://www.samhsa.gov/health/Privacy>
- D. Military Personnel Drug Abuse Testing Program, (DoD Directive (DoDD) 1010.1).
- E. DoD Civilian Employee Drug Abuse Testing Program, (DoDD 1010.9).

### **II. Definitions Associated with Alcohol and Drug Abuse Program Patient Records**

- A. Alcohol Abuse: The use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.
- B. 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.
- C. Disclosure: The release, transfer, provision of access to, or revealing in any other manner of PHI outside the entity holding the information.
- D. Drug Abuse: The use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

- E. 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 TMA, the Army, the Navy, or the Air Force.
- F. 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.
- G. 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 Alcohol and Drug Abuse Program Patient Records**

#### **A. Confidentiality.**

1. The confidentiality requirements of both the HIPAA Privacy Rule and ADAMHA apply to alcohol and drug abuse patient records maintained by MHS healthcare providers and TRICARE.
2. Covered alcohol and drug abuse patient records may only be used or disclosed if the requirements of both DoD 6025.18-R and the ADAMHA regulation are satisfied. Thus, if a use or disclosure is permitted by one regulation and prohibited by the other, the prohibition shall be followed.

#### **B. Authorization.**

1. A valid authorization satisfying the requirements of both HIPAA Privacy and ADAMHA is generally required for uses and disclosures of alcohol and drug abuse patient records.
2. Each military treatment facility (MTF) must establish policies and procedures for authorization for uses and disclosures of alcohol and drug abuse patient records.

- C. Non-Applicability. This guidance does not apply to drug testing programs for military and civilian personnel carried out under the authority of DoD Directive 1010.1 or DoD Directive 1010.9.

### **IV. Guidance for Alcohol and Drug Abuse Program Patient Records Under 42 CFR Part 2**

#### **A. Consent.**

1. The content of any record may be disclosed in accordance with prior written consent from the patient who is the subject of such record, but only in accordance with 42 CFR Para 42, Subpart C. See the sample consent form at 42 CFR 2.31(b).
2. If the patient is a minor and State law gives a minor acting alone the legal capacity to obtain alcohol or drug abuse treatment, then consent may be given only by the minor patient. If state law requires consent of a parent or guardian, then both the minor and parent or guardian must provide consent.

- B. Uses and Disclosures. Whether or not patient gives written notice, the content of such record may be disclosed:

1. To medical personnel to the extent necessary for the purposes of a medical emergency.

2. To authorized individuals for the purpose of conducting scientific research, management and financial audits, or program evaluation, so long as such individuals are not able to identify - directly or indirectly - the subject patient(s).
  3. If authorized by an appropriate order of a court after showing good cause.
- C. Use of Records in Criminal Proceedings. Except as authorized by a court order, no record related to alcohol and drug abuse may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.
- D. Non-Applicability.
1. The prohibitions of this rule do not apply to any interchange of records:
    - a. Within the Armed Forces; or
    - b. Between the Armed Forces and those components of the Department of Veterans Affairs (VA) furnishing healthcare to veterans.
  2. The prohibitions of this rule do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate authorities
- E. Additional Information.
1. For the most recent ADAMHA guidance, refer to “Frequently Asked Questions: Applying the Substance Abuse Confidentiality Regulations to Health Information Exchange (HIE),” issued June 2010 by the Substance Abuse and Mental Health Services Administration (SAMHSA).
  2. See also SAMHSA’s comparison of the HIPAA Privacy Rule and the ADAMHRA regulations (2004).
  3. These documents are available at <http://www.samhsa.gov/health/Privacy>.