



TMA Privacy and Civil Liberties Office Information Paper



WOMEN, INFANTS, AND CHILDREN PROGRAM (WIC)

HIPAA Privacy ♦ March 2010

PURPOSE

This information paper addresses the applicability of the Department of Defense Health Information Privacy Regulation (DoD 6025.18-R) to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). While DoD 6025.18-R, C2, establishes policy for programs within the DoD to which the Regulation does and does not apply, there are still some instances in which applicability is unclear. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR Parts 160 and 164) provides additional clarification when it describes government programs that provide or pay the cost of medical care, but are not considered health plans.

BACKGROUND

WIC is a special supplemental nutrition program that safeguards the health of low-income women, infants, and children who are at nutritional risk by providing nutritious supplemental foods, health and nutrition counseling, breastfeeding education and support, and referrals to health care. To be eligible for participation in the WIC program, women, and children must be determined to be at “nutritional risk.” This includes medically-based risks such as anemia, underweight, maternal age, history of pregnancy complications, or poor pregnancy outcomes as well as diet-based risks, such as inadequate dietary pattern. Individuals are also eligible if the gross income of the family falls at or below 185% of the US Poverty Income Guidelines.

GUIDANCE

The HIPAA Privacy Rule (45 CFR 160.103) provides that health plans exclude government-funded programs that do not have a principal purpose of providing, or paying the cost of, health care. For example, programs such as the Special Supplemental Nutrition Program for WIC and the Food Stamp Program, which provide or pay for nutritional services, are not considered to be health plans. Since these programs are not considered health plans, they are not subject to the laws of HIPAA nor are they required to comply with DoD 6025.18-R. This is also true for the WIC Overseas Program. Military treatment facilities (MTFs) and other covered entities must ensure that proper authorizations are obtained before protected health information (PHI) is released to WIC programs even when such program are associated with, operated by, or located in MTFs. Since the provisions of DoD 6025.18-R do not apply to the program, the permissible uses and disclosures of PHI for treatment, payment and operations of the covered entity will not apply. The WIC program must be considered an external entity and proper authorization for the release of PHI must be obtained and disclosures must be tracked.