

# Incidental Uses and Disclosures of Protected Health Information

September 2024

## I. Supporting Policies for this Information Paper

- A. The Implementation of The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs (DoDM 6025.18, 4.5., d.) and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR 164.502(a)(1)(iii)) establish the requirement for incidental uses and disclosures.
  - 1. DoDM 6025.18, 4.5.d.(2)(b) requires covered entities to have in place appropriate safeguards to protect the privacy of protected health information (PHI).
  - 2. DoDM 6025.18, 4.5.d.(2)(a), outlines the “Minimum Necessary Rule.”
- B. The Security of Individually Identifiable Health Information in DoD Health Care Programs (DoDI 8580.2) provides guidance for regarding administrative, physical, and technical safeguards of “electronic protected health information (ePHI)”.

## II. Definitions Associated with Incidental Uses and Disclosures of PHI

- 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 divulging in any other manner of PHI outside the entity holding the information.
- C. Incidental use and disclosure: Occurs when the use or disclosure of an individual’s PHI cannot reasonably be prevented by chance or without intention or calculation during an otherwise permitted or required use or disclosure.
- 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): Information that is created or received by a covered entity and relates to the past, present, or future physical or mental health of an individual; and can be used to identify the individual. It excludes health information in

employment records held by a covered entity in its role as employer.

- F. 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 Regarding Permitted Incidental Uses and Disclosures of PHI

- A. The Privacy Rule is not intended to impede routine healthcare communications and practices that are essential in providing healthcare to individuals. Such practices can continue, even when an incidental use or disclosure may occur, provided that the entity has taken reasonable precautions to safeguard and limit the PHI disclosed.
- B. DoDM 6025.18, The incidental use and disclosure rule applies only when the DoD covered entity has complied with the following:
1. The minimum necessary rule under Paragraph 4.5.b. by making reasonable efforts to limit the use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure, consistent with that paragraph; and,
  2. The requirement of Paragraph 7.3.a. by having in place appropriate administrative, technical, and physical safeguards to protect the privacy of PHI.
- C. Subject to compliance by a DoD covered entity of the conditions established in Paragraph 4.5.d.(2), the following are examples of incidental uses and disclosures that are permitted under Paragraph 4.5.d.(1):
- a. Confidential conversations among health care providers or with patients when there is a possibility they may be overheard.
  - b. Using sign-in sheets in waiting rooms or calling patients in waiting rooms by name.
  - c. Posting the patient's name on the wall outside the patient's room.
  - d. Maintaining patient charts at the patient's bedside. For further information: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/incidental-uses-and-disclosures/index.html>
  - e. Placing patient charts outside the examination room.
  - f. Leaving messages for patients on their answering machines or with a family member answering the phone.



- g. Discussing mental health issues among individuals participating in a group therapy session.
- h. Using X-ray light boards.
- i. Discussing a patient's condition during training rounds in connection with a health care professional training program.

**IV. Nonapplicability of the Incidental Uses and Disclosures Rule.**

- A. The incidental uses and disclosure rule of Paragraph 4.5.d.(1) does not excuse non-compliance with this issuance due to mistakes, neglect, a failure to have in place appropriate safeguards, or a failure to make reasonable efforts to limit the use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure.
- B. While incidental uses and disclosures are permitted, reasonable steps, such as those noted below, should be taken to protect PHI in both paper (faxes, paper medical records) and electronic forms (electronic records) to avoid these events to the extent possible.
  - 1. Paper PHI should be protected by being stored in secure areas in reasonably protected containers.
  - 2. Fax machines and other printers should not be readily accessible by the general public.
  - 3. Documents that are to be discarded should be placed in designated containers for shredding or placed in a burn bag for proper disposal.
  - 4. Electronic PHI should be protected by using Common Access Cards and/or passwords and computer screens should be face away from public traffic areas to minimize exposure of PHI to unauthorized individuals.
  - 5. Emails containing PHI should be encrypted and digitally signed.
  - 6. All devices, including laptops and electronic media, which contain PHI should be physically secure when not in use.

*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)

