



ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION
UNITED STATES ARMY SUPPORT ACTIVITY DIX
KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS

THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) PRIVACY RULE

In 1996, Congress enacted HIPAA to improve portability and continuity of health insurance coverage, to combat waste, fraud and abuse in health care delivery, and to improve access to long-term care services and coverage. HIPAA has several components. However, the component most applicable to the military provides for increased privacy protection of protected health information (PHI). Of note, military personnel are subject to UCMJ or administrative actions for violating the privacy protections of HIPAA.

The general prohibition under HIPAA is that the PHI of individuals, living or deceased, shall not be used or disclosed except for specifically permitted purposes. PHI is anything that tells someone about the past, present, or future health of an individual; the provision of healthcare to an individual; or the past, present or future payment for the provision of healthcare to an individual. This includes the patient's name, address, ZIP code, phone number, Social Security number, gender, age, race, diagnosis information, and treatment information.

However, HIPAA allows PHI to be used freely for treatment, payment or routine healthcare operations. If the release of information is not for one of these purposes, the medical treatment facility (MTF) will either need the patient's written authorization, or the disclosure must fall into one of the permissible disclosures categories:

- As required by any law (includes military and DOD Regulations)
- To avert serious threats to health or safety
- For specialized governmental functions. Generally, an MTF may use and disclose PHI of armed forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, but the military will have to account for the disclosure. This includes fitness for duty determinations.
- For judicial and administrative proceedings
- For military law enforcement purposes
- For organ, eye, or tissue donation purposes
- Regarding victims of abuse, neglect or domestic violence
- Regarding inmates in correctional institutions or in custody
- For workers' compensation cases
- For public health and other oversight activities
- About decedents (to a coroner or medical examiner to identify a deceased person, determine a cause of death, or for other duties as authorized by law)

- Drug testing program records are not subject to HIPAA
- Incidental uses/disclosures are permissible under HIPAA, such as sign-in sheets, calling patient by their name, and posting the patient's name outside the door.

When HIPAA permits release of information, MTFs must provide the minimum amount of information that will satisfy the intended purpose of the disclosure (similar to the Privacy Act's need to know standard), except for treatment purposes, disclosures to the subject of the information, when the individual authorizes full release, and when other laws require the use/disclosure. It is possible the entire medical record is the minimum necessary, but the requester will have to specify that is the case.

Under the special government functions rule described above, commanders can access members' PHI when necessary for mission accomplishment. For example, commanders may need PHI related to readiness (vaccination status; profile status; etc). Commanders may also require information related to medical conditions impacting members' abilities to perform their duties (profile information, e.g.). Commanders may even need PHI to verify the whereabouts of subordinates. However, under the minimum necessary standard stated above, any release of PHI must be limited in scope to what the commander actually needs to accomplish his or her mission. For example, if a member has a foot injury that precludes prolonged standing, the commander may have access to PHI related to the foot injury because it impacts the type of day-to-day duties that the member can be assigned (i.e., it impacts mission accomplishment). The commander would not have access to the member's dental records, mammograms, or other medical information unrelated to the foot injury, though, because they go beyond the commander's true need (i.e., the release would exceed the minimum necessary standard).

There is no blanket rule concerning release of PHI to commanders. In each case, the nature and extent of PHI released must be determined by evaluating the commander's need and applying the minimum necessary standard. Only commanders and their designees can access PHI under these rules. If the commander wishes to designate a First Sergeant as an authorized recipient of PHI, the commander should do so in writing. Of importance, a commander's access to information may be further limited by DOD policy on confidentiality for sexual assault victims.

For more information on HIPAA see the following:

Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996)

DOD 6025.18-R, *DOD Health Information Privacy Regulation* (24 January 2003)