



# TMA Privacy and Civil Liberties Office Information Paper



## USES AND DISCLOSURES OF PHI FOR PAYMENT PURPOSES

HIPAA Privacy ♦ July 2011

### **I. Supporting Policies for this Information Paper**

- A. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR 164.501, 506(c)(3)) establishes the definition of payment for healthcare services furnished by covered entities and the circumstances under which protected health information (PHI) may be disclosed for payment purposes.
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, DL1.1.27, C4.2.3) implements the above part of the HIPAA Privacy Rule within the Military Health System (MHS).
- C. The Health Information Technology for Economic and Clinical Health (HITECH) Act, which was enacted by the American Recovery and Reinvestment Act of 2009, sets forth additional requirements for payment disclosures through an electronic health record.

### **II. Definitions Associated with Uses and Disclosures of PHI for Payment Purposes**

- A. Business Associate (BA): A business associate is a person – who is not part of the covered entity’s workforce – or a separate entity that performs tasks on behalf of the covered entity involving use of the covered entity’s protected health information.
- B. 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.
- C. Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the information.
- 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 TMA, 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; providing payment for healthcare to 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 for Using and Disclosing PHI for Payment Purposes**

- A. Healthcare payment activities are those actions taken by health plans and healthcare providers on behalf of a patient. These include, but are not limited to:
  - 1. Determining eligibility or coverage;
  - 2. Risk adjustments;
  - 3. Billing, submitting claims, and other collection activities;
  - 4. Reviewing healthcare services for medical necessity, coverage, appropriateness of care, or justification of charges; and
  - 5. Utilization reviews, including pre-certification and preauthorization of services.
- B. PHI disclosed to consumer reporting agencies for premium or reimbursement purposes should be limited to:
  - 1. Name and address.
  - 2. Date of birth.
  - 3. Social security number.
  - 4. Payment history.
  - 5. Account number.
  - 6. Name and address of the healthcare provider and/or health plan.
- C. Authorizations.
  - 1. A covered entity may disclose PHI for its own payment activities or the payment activities of a healthcare provider or another covered entity without authorization by the patient or his/her personal representative.
  - 2. A covered entity must comply with a patient's request to restrict payment disclosure if the patient has fully paid for the service out-of-pocket.
- D. Accounting of Disclosures.
  - 1. Covered entities are not currently required to account for payment disclosures.
  - 2. Beginning January 1, 2014, covered entities will be required to account for payment disclosures through an electronic health record.
- E. Disclosures to Family Members and Friends. Provided that the individual does not object to the disclosure or, if the individual is not present or is otherwise incapacitated, a covered entity may, in the individual's best interest based on professional judgment, disclose PHI relevant to the individual's healthcare payment to a family member, relative, or close personal friend of the individual without authorization.

- F. Disclosures to Debt Collection Agencies. A covered entity may use the services of debt collection agencies as a payment activity.
1. The covered entity must have a Business Associate Agreement (BAA) with the debt collection agency to perform this function.
  2. Disclosures to collection agencies under a BAA are governed by other provisions of the rule, including the minimum necessary requirements found under paragraph 8.2 of DoD 6025.18-R.
  3. The covered entity and its business associates must comply with limitations placed on location information outlined by the Fair Debt Collection Practices Act (15 USC 1692b §804).
- G. Patient authorization is not required for activities conducted by Debt Collection Assistance Officers, Beneficiary Counseling, and Assistance Coordinators on the patient's behalf. These activities are outlined in the MHS Notice of Privacy Practices.
- H. Covered entities may report to consumer credit reporting agencies in accordance with the Fair Credit Reporting Act (FCRA, 15 USC § 1681). These disclosures are limited to the following PHI about the individual:
1. Name and address.
  2. Date of birth.
  3. Social Security number.
  4. Payment history, and account number.
- I. Minimum Necessary. Covered entities should make reasonable efforts to limit disclosures of PHI for payment purposes to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.