

Information Paper

SUBJECT: HIPAA/Medical Privacy Basics for Commanders

1. PURPOSE. To provide commanders guidance on the protected nature of information in Soldiers' medical files.

2. FACTS.

a. The Health Insurance Portability and Accountability Act (HIPAA, 42 USC 1320d) provides protection for Army medical records. Generally, information in medical records is not to be disclosed. This protection is in addition to the nondisclosure requirements of the Privacy Act. HIPAA covers individually identifiable medical information.

b. Commanders may access the personal health information of their subordinates to:

- (1) determine Soldier's fitness for duty;
- (2) determine Soldier's fitness to perform any particular mission, assignment, order, or duty;
- (3) carry out medical surveillance activities;
- (4) report casualties in any military operation; and
- (5) "...carry out any other activity necessary to the proper execution of the mission of the Armed Forces."

See DoD Directive 6025.18-R, Health Information Privacy Regulation, para C7.11.

c. The Directive, para C1.2.1, provides that "In general, personally identifiable health information of individuals, both living and deceased, shall not be used or disclosed except for specifically permitted purposes." Specific purposes authorizing disclosure include:

- (1) "treatment, payment, and healthcare operations" per the regulation;
- (2) public health;
- (3) victims of abuse or neglect;
- (4) health oversight activities;
- (5) judicial or administrative proceedings;
- (6) law enforcement;

ATZK-JAA

SUBJECT: HIPAA/Medical Privacy Basics for Commanders

- (7) organ donation;
- (8) workers compensation programs; and
- (9) aversion of a serious threat to health or safety.

(Note that the patient may also consent to disclosure.)

d. Even when disclosures are permitted, the information disclosed should be the minimum necessary to accomplish the intended purpose.

e. Without an exception, husbands do not receive information about their wives. Parents do not receive information about their children who are 18 years old or older. Children do not receive information about their Servicemember parents. Parents have access to information pertaining to their minor children, even if divorced, unless a court orders otherwise. Those who disclose information must make an effort to determine that the requestor of the information is entitled to it.

f. Unencrypted email does not meet the privacy or security requirements for the transmission of personal health information.

g. Doctors, nurses, pharmacists, clinics, other health care providers, and TRICARE personnel are all subject to the HIPAA standards.

h. HIPAA provides that patients may see and receive a copy of their health records on request.

i. Criminal penalties for unlawfully using, obtaining, or disclosing protected information begin with a fine not to exceed \$50,000 and imprisonment not to exceed one year. If the violation is done with the intent to sell the information or to maliciously harm the patient, the fine is not to exceed \$250,000, and imprisonment is not to exceed ten years.

3. POC is the Military Law & Ethics Division at 4-7414/4668.

Chief, Military Law & Ethics Division