

# The Military Command Exception and Disclosing PHI of Armed Forces Personnel

## Introduction

This paper provides guidance on the use and disclosure of Armed Forces personnel PHI by covered entities for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission. This “Military Command Exception” permits the use and disclosure of PHI that would otherwise be prohibited by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule.

## Definitions

Covered Entity: A health plan or a health care provider that transmits any health information in electronic form in connection with a HIPAA standard transaction.

Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the information.

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained by electronic or any other form or medium. PHI excludes individually identifiable health information in employment records held by a covered entity in its role as employer.

Use: With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

## Discussion

Under the Military Command Exception, a covered entity may disclose the PHI of Service members for authorized activities to appropriate military command authorities. It is important to note that this exception **does not require** covered entities to disclose PHI to commanders, it **only permits** the disclosure. If disclosure is made, then only the minimum amount of information necessary should be provided. Further, the Exception **does not permit** a Commander’s direct access to a Service member’s electronic medical record, unless otherwise authorized by the Service member or the HIPAA Privacy Rule.

Appropriate military command authorities include commanders who exercise authority over a Service member, or another person designated by a commander.

Authorized activities for which PHI may be disclosed to a commander include but are not limited to:

- Determining the member's fitness for duty;
- Fitness to perform a particular assignment; or
- Carrying out any other activity essential for the military mission.

### **Mental Health and/or Substance Misuse**

To dispel stigma around Service members seeking mental health care or voluntary substance misuse education, DoDI 6490.08 was issued to balance patient confidentiality rights with the commander's need to make informed operational and risk management decisions.

DoD healthcare providers shall **not** notify a Service member's commander when the member obtains mental health care and/or substance misuse education services – **unless** one of the below conditions or circumstances apply. If they apply, then disclosure is required.

- Harm to self. There is a serious risk of self-harm by the member.
- Harm to others. There is a serious risk of harm to others. This includes any disclosures concerning child abuse or domestic violence.
- Harm to mission. There is a serious risk of harm to a specific military mission.
- Special personnel. The member is in the Personnel Reliability Program or has mission responsibilities of such potential sensitivity or urgency that normal notification standards would significantly risk mission accomplishment.
- Inpatient care. The member is admitted or discharged from any inpatient mental health or substance misuse treatment facility.
- Acute medical conditions interfering with duty. The member is experiencing an acute mental health condition or is engaged in an acute medical treatment regimen that impairs the member's ability to perform assigned duties.
- Substance misuse treatment program. The member has entered into, or is being discharged from, a formal outpatient or inpatient treatment program for the treatment of substance misuse.
- Command-directed mental health evaluation. The mental health services are obtained as a result of a command-directed mental health evaluation.
- Other special circumstances. The notification is based on other special circumstances in which proper execution of the military mission outweighs the interests served by avoiding notification, as determined on a case-by-case basis by a covered entity.

If one of these circumstances or conditions applies, DoDI 6490.08 makes the disclosure to the commander permitted AND required.

### Substance Misuse Records

Covered entities shall follow the special rules in 42 CFR Part 2 regarding confidentiality of substance misuse patient records.

### Privacy Act of 1974

Commanders or other authorized officials receiving PHI from a covered entity shall protect the information in accordance with the Privacy Act to ensure it is only provided to personnel with an official need to know.

## Reference:

45 CFR 164.512(k)(1) (Military Command Exception provision of the HIPAA Privacy Rule)

DoD Manual 6025.18, "Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs," March 13, 2019, paragraph 4.4.k (or corresponding provision in successor issuance)

Federal Register Notice, Volume 68, Page 17357, "DoD Health Information Privacy Program," April 9, 2003

DoD Instruction 6490.08, "Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members," August 17, 2011

DoD Directive 6490.02E, "Comprehensive Health Surveillance," August 28, 2017

42 CFR Part 2

DHA "Military Command Exception" webpage at: <http://www.health.mil/Military-Health-Topics/Privacy-and-Civil-Liberties/HIPAA-Compliance-within-the-MHS/Military-Command-Exception>

*If you have any questions about any of the information above, please contact the DHA Privacy Office at:*  
[dha.ncr.admin-mgt.mbx.dha-privacyguidance@mail.mil](mailto:dha.ncr.admin-mgt.mbx.dha-privacyguidance@mail.mil)