

The Minimum Necessary Rule

November 2024

I. Supporting Policies for the Minimum Necessary Rule

- A. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 CFR 164.514(d)(1)) establishes the requirements for limiting the use, disclosure, and request of protected health information (PHI) by covered entities to the minimum necessary.
- B. The DoD Manual 6025.18 Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs implements the HIPAA Privacy Rule for the Military Health System (MHS).

II. Definitions Associated with the Minimum Necessary Rule

- 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 revealing in any other manner of PHI outside the entity holding the information of covered individual.
- C. **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.
- D. **Minimum Necessary:** The minimum amount of PHI that is reasonably needed to achieve the purpose of a requested use, disclosure, or request for PHI.
- E. **Protected Health Information (PHI):** Information that is created or received by a covered entity and related to the past, present, or future physical or mental health of an individual; providing payments 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 individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

III. Guidance for the Minimum Necessary Rule

- A. A DoD covered entity or business associate must make reasonable efforts to limit the use, disclosure, or request of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
- B. The minimum necessary rule does not apply to:
 - 1. Disclosures to, or requests by, a health care provider for treatment.
 - 2. Uses or disclosures made to the individual.
 - 3. Uses and disclosures made pursuant to an authorization.
 - 4. Disclosures to the Secretary of Health & Human Services.
 - 5. Uses or disclosures required by law.
 - 6. Uses or disclosures that are required for compliance with this DoDM 6025.18.
- C. **Minimum Necessary Uses Disclosures and Requests of PHI for Non-Treatment Purposes.**
 - 1. A DoD covered entity should identify those persons or classes of persons, as appropriate, in its workforce who need access to PHI to carry out their duties.
 - 2. For **routine** disclosures and requests, a covered entity should establish policies and procedures that limit the PHI disclosed and requested to the amount reasonably necessary.
 - 3. For **non-routine** disclosures and requests, a covered entity should:
 - a. Develop criteria to limit the PHI disclosed and requested to the amount reasonably necessary, and
 - b. Review each disclosure and request individually in accordance with such criteria.
- D. **Reasonable Reliance.** Under certain circumstances, a covered entity may reasonably infer that a requested disclosure is to the minimum necessary when the request is made by:
 - 1. Making disclosures to public officials that are permitted under DoDM 6025.18, if the public official represents that the information requested is the minimum

necessary for the stated purpose(s).

2. The information is requested by another covered entity.
3. The information is requested by a professional who is a member of its workforce or is a business associate of the covered entity for the purpose of providing professional services to the covered entity, if the professional represents that the information requested is the minimum necessary for the stated purpose(s).
4. Documentation or representations that comply with the applicable requirements of DoDM 6025.18 have been provided by a person requesting the information for research purposes.

*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*