
The Military Command Exception

Frequently Asked Questions

1. Are all covered entities required to disclose PHI of Armed Forces personnel when properly requested by appropriate military command authorities?
 - No. Covered entities are permitted but not required, under HIPAA, to disclose PHI of Armed Forces personnel to command authorities; thus, such disclosure is made at the discretion of the covered entity. If, however mental health or substance misuse information is involved, then DoDI 6490.08 does not leave any discretion to the DoD covered entity; disclosure is either prohibited or required.
2. What policies and procedures should be established by covered entities regarding these uses and disclosures?
 - Maintain an approved roster of commanders and other persons who may receive service members' PHI on the commander's behalf.
 - Develop criteria for requests to ensure release of only the minimum necessary PHI (e.g., cases requiring a clinical summary rather than the entire medical record).
 - Establish a policy to designate authority for release of PHI.
 - Ensure proper training of personnel on the types of information that qualify as PHI.
 - Ensure local policies and procedures include consideration of circumstances that may result in disclosure of service members' PHI to command authorities.
 - Educate personnel about local policies concerning routine PHI requests from commanders considered necessary for making military mission impact determinations.
3. Is a covered entity required to account for these types of disclosures under the HIPAA accounting requirement?
 - Yes. The disclosure of Armed Forces personnel PHI to command authorities must be accounted for by covered entities. However, this accounting requirement does not apply to a Service member's voluntary disclosure of his/her health information to a command authority.
4. Are command authorities allowed access to PHI regarding a Service member's family member if a situation with that beneficiary negatively impacts the Service member's ability to perform his/her military mission?
 - No. The military command exception is only valid for Armed Forces personnel. PHI of family members or other categories of beneficiaries shall never be shared with command authorities without a HIPAA-compliant authorization signed by the beneficiary.
5. What resources are available to help with making a determination regarding the disclosure of Armed Forces personnel PHI to command authorities?
 - In addition to the supporting policies cited below, individuals may also utilize their local legal office, the covered entity's HIPAA Privacy Officer, and/or the HIPAA Privacy Representative.