DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY MEDICAL COMMAND
2748 WORTH ROAD
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REPLY TO
ATTENTION OF

OTSG/MEDCOM Policy Memo 14-080

MCZX

24 SEP 2014

Expires 24 September 2016

MEMORANDUM FOR COMMANDERS, MEDCOM MAJOR SUBORDINATE COMMANDS

SUBJECT: Release of Protected Health Information (PHI) to Unit Command Officials

1. References:

a. DoD 6025.18-R, Health Information Privacy Regulation, 24 Jan 03, http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf.

b. Federal Register Notice, Volume 68, No. 68, Page 17357, 9 Apr 03, subject: DoD Health Information Privacy Program, http://www.gpoaccess.gov/fr/index.html.

c. AR 40-66, Medical Records and Healthcare Documentation, 17 June 08 with Rapid Action Revision, 4 Jan 10.

d. ALARACT, 160/2010, Subject: VCSA Sends on Protected Health Information(PHI), 282049Z May 10.

e. DoDI 6490.08, Subject: Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members, 17 Aug 11.

2. Purpose: This purpose of this policy is to present Office of The Surgeon General and US Army Medical Command (MEDCOM) policy and general guidelines for disclosing and accounting for the minimum necessary Armed Forces members' PHI to be disclosed to commanders and other authorized unit officials.

3. Proponent: The proponent for this policy is the MEDCOM Health Insurance Portability and Accountability Act (HIPAA) Privacy Officer, Patient Administration Division, Patient Care Integration Directorate, MEDCOM G-3/5/7.

*This policy supersedes OTSG/MEDCOM Policy Memo 12-062, 24 Aug 12, subject: Release of Protected Health Information (PHI) to Unit Command Officials.

4. Policy:

a. As published in referenced documents, the Privacy Rule of the HIPAA provides standards for disclosure of PHI pertaining to Armed Forces members without their authorization. These standards include certain exemptions established to support the unique requirements of military operations. To meet the intent of the law, PHI disclosures permitted under the military exemptions must also comply with the minimum necessary and disclosure accounting standards.

b. Medical commanders will provide timely and accurate information to support unit commanders' decision-making pertaining to the health risks, medical fitness and readiness of their Soldiers. The unit surgeon, when available and as appropriate, will be involved in the communication process. The general procedures below are consistent with the military provisions under the HIPAA Privacy Rule for release of PHI to unit command officials.

c. The military provisions under the Privacy Rule do not apply to the Family Members of military personnel, retirees and their Families, civilian employees, or other government officials. Disclosure of PHI pertaining to non-military personnel must be made in accordance with references 1.a. and 1.c.

5. Responsibilities:

a. The MEDCOM HIPAA Privacy Officer is responsible for this policy, providing staff supervision and updating the policy as necessary.

b. Regional Medical Command Commanders will include compliance with this policy as a component of their Organizational Inspection Program (OIP).

c. Medical Treatment Facility (MTF) Commanders will designate personnel by roles who will be authorized to release information to unit surgeons and/or unit command officials. Note: HIPAA applies to unit surgeons as part of TSG's covered entity. MTF Commanders will ensure that 100% of privileged providers and patient administration personnel are trained upon their arrival at the MTF. Training materials are provided at https://www.us.army.mil/suite/page/419354. MTF Commanders will coordinate with installation senior commanders to ensure that PHI training is presented at least annually in installation-level forums, e.g., town hall meetings. Training materials are provided at https://www.us.army.mil/suite/files/33416135. MTF Commanders will include compliance with this policy as a component of their OIP.

d. MTF Privacy Officers and patient administrators will provide staff assistance to those who release PHI to unit command officials to ensure that the release of PHI is in

compliance with applicable federal laws, Department of Defense Instructions, Army regulations and this policy.

e. Unit Commanders will designate unit command officials in writing who will be responsible for requesting and receiving a Soldier's PHI. Unit command officials include the chain of command; specifically, corps commanders, division commanders, brigade commanders, battalion commanders, company commanders, executive officers, first sergeants, platoon leaders, and platoon sergeants. Unit command officials are not required to have HIPAA training. They are not part of the covered entity. Unit command officials must protect the PHI in accordance with (IAW) the Privacy Act of 1974.

6. Procedures:

a. The PHI of Soldiers may be released to authorized unit surgeons and unit command officials as related to the purposes outlined in the regulation at reference 1.a. (paragraph A, enclosure 1). The Soldier's authorization is required for PHI disclosures not applicable to the military clause or other provisions of reference 1.a., Chapter 7.

(1) Command management programs involving disclosure of PHI as governed by Army or DoD policy (paragraph B, enclosure 1) do not require a Soldier's authorization, unless otherwise indicated. The specific PHI released in connection with these programs will be IAW the governing policy.

(2) Instances when the MTF Commander will proactively inform the Commander within 24 hours of medical concerns are at paragraph C, enclosure 1. Most importantly, these instances focus on, but are not limited to, circumstances where the Soldier's judgment or clarity of thought might be suspect by the clinician or to avert a serious and imminent threat to health or safety of a person, such as suicide, homicide or other violent action.

(3) The processes for how unit command officials are notified are described in paragraph D, enclosure 1.

(4) Written or phone requests not connected with a regulatory command management program will be honored by release of the minimum necessary information that addresses only the Soldier's general health status, adherence with scheduled appointments, profile status, and medical readiness requirements (paragraph E, enclosure 1). In accordance with reference 1.c., advise unit commanders to use DA Form 4254 (Request for Private Medical Information) to request additional PHI.

b. Collaborative communication between commanders (or their designated representatives) and healthcare providers is critical to the health and well-being of our Soldiers. Healthcare providers must not limit communication to eProfile, but should

speak with commanders when required. Commanders should also share information with healthcare providers, relating changes in Soldier behavior or other information that could impact a diagnosis or treatment. This is especially important during periods of soldier transition (Permanent Change of Station, Temporary Duty, separation, etc.).

c. The MTF staff will use the Military Health System Protected Health Information Management Tool (PHIMT) to account for PHI disclosure as required by reference 1.c.. When the PHIMT is not available, the healthcare provider will document the release of the PHI in AHLTA or the Service Treatment Record. The documentation will include date of the disclosure, name and address of the individual receiving the information, a brief description of the PHI disclosed, and the basis for the disclosure. These procedures will be subject to be assessed during OIPs.

d. The MTF shall advise unit command officials that once the MTF releases PHI to unit command officials, it is their responsibility to protect the information IAW the Privacy Act of 1974 (AR 340-21). The information should further be disclosed to others only on a need to know basis. If a Soldier believes that their PHI was inappropriately disclosed to others by unit command officials, they may file a Privacy Act complaint with their unit Privacy Act Officer and/or pursue other avenues of corrective action.

e. Healthcare providers will discuss with Soldiers those circumstances under which their commander will receive notification. This includes duty restrictions, changes in deployment status, medications that may limit duty performance and anytime a Soldier is perceived to be a risk to themselves or others. A suggested handout is at enclosure 2.

f. In other special circumstances, the notification to the Commander of a Soldier's PHI is based on whether the proper execution of the military mission outweighs the interests served by avoiding notification, as determined on a case-by-case basis by a healthcare provider (or other authorized official of the MTF involved) at the 0-6 or equivalent level or above, or a commander at the 0-6 level or above. When such decisions are made, the MTF will notify the MEDCOM Patient Administration Division within 72 hours.

FOR THE COMMANDER:

Encl

ULDRIC L. FIORE, JR.
Chief of Staff

Guidelines for Release of Protected Health Information (PHI) to Unit Command Officials

A. The purposes for which the minimum necessary PHI of an individual may be used or disclosed to unit command officials exercising authority over a member of the Armed Forces without the individual's authorization are the following:

1. To determine the member's fitness for duty, including but not limited to the member's compliance with standards and activities carried out under AR 50-1 (Biological Surety), AR 50-5 (Nuclear Surety), AR 50-6 (Chemical Surety), AR 600-9 (The Army Weight Control Program), AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), and similar requirements.

2. To determine the member's fitness to perform any particular mission, assignment, order or duty, including compliance with any actions required as a precondition to performance of such mission, assignment, order or duty.

3. To carry out activities under the authority of DoD Directive 6490.2, Joint Medical Surveillance.

4. To report on casualties in any military operation or activity IAW applicable military regulations or procedures.

5. To carry out any other activity necessary to the proper execution of the mission of the Armed Forces.

B. These are examples of regulatory and command management programs that do not require a Soldier's authorization for PHI disclosure. Medical information released under these programs will be IAW the governing policy:

1. To coordinate sick call, routine and emergency care, quarters, hospitalization, and care from civilian providers using DD Form 689 (Individual Sick Slip) IAW AR 40-66 (Medical Record Administration and Health Care Documentation) and AR 40-400 (Patient Administration).

2. To report results of physical examinations and profiling IAW AR 40-501 (Standards of Medical Fitness).

3. To screen and provide periodic updates for individuals in personnel reliability/special programs, such as AR 50-1 (Biological Surety), AR 50-5 (Nuclear Surety), AR 50-6 (Chemical Surety), and AR 380-67 (Personnel Security Program).

4. To review and report IAW AR 600-9 (The Army Body Composition Program).

5. To initiate line of duty determinations and to assist investigating officers IAW AR 600-8-4 (Line of Duty Policy, Procedures, and Investigations).

6. To conduct medical evaluation boards and administer physical evaluation board findings IAW AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) and similar requirements.

7. To review and report IAW AR 600-110 (Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV)).

8. To carry out activities under the authority of AR 40-5 (Preventive Medicine) to safeguard the health of the military community.

9. To report on casualties in any military operation or activity IAW AR 600-8-1 (Army Casualty Operations/Assistance/Insurance) or local procedures.

10. To medically administer flying restrictions IAW AR 40-8 (Temporary Flying Restrictions Due to Exogenous Factors) and AR 40-501 (Standards of Medical Fitness). To participate in aircraft accident investigations IAW AR 40-21 (Medical Aspects of Army Aircraft Accident Investigation).

11. To respond to queries of accident investigation officers to complete accident reporting per the Army Safety Program IAW AR 385-10 (The Army Safety Program).

12. To report mental status evaluations IAW MEDCOM Regulation 40-38 (Command Directed Behavioral Health Evaluations).

13. To report special interest patients IAW AR 40-400 (Patient Administration).

14. To report the Soldier's dental classification IAW AR 40-3 (Medical, Dental, and Veterinary Care) and HA Policy 02-011 (Policy on Standardization of Oral Health and Readiness Classifications).

15. To assist in serious incident reporting IAW AR 190-45 (Law Enforcement Reporting).

16. To carry out Soldier Readiness Program and mobilization processing requirements IAW AR 600-8-101 (Personnel Processing In-, Out-, Soldier Readiness, Mobilization, and Deployment Processing).

17. To provide initial and follow-up reports IAW AR 608-18 (The Army Family Advocacy Program).

18. To allow Senior Commanders to review Soldier medical information to determine eligibility for assignment/attachment to a Warrior Transition Unit. (Annex A to FRAGO 3 to EXORD 118-07, 021000Q JUN 2007).

19. To provide initial and follow-up reports IAW AR 600-85 (The Army Substance Abuse Program).

20. Other regulations carrying out any other activity necessary to the proper execution of the mission of the Army.

C. Due to the unique nature of the military mission, there are instances when an MTF Commander will proactively inform a commander of a Soldier's minimum necessary PHI/medical/behavioral health condition. The Electronic Profiling System (e-Profile) will be used when possible. These instances are shown below. The examples provided are not all inclusive:

1. Harm to Self and/or Harm to Others. Soldier's judgment or clarity of thought is perceived as a serious and imminent threat to health or safety of a person, such as suicide, homicide, or other violent action.

Example: A Soldier indicates that he is thinking of hurting himself or his wife.

Example: A high-risk Soldier who receives multiple behavioral health services and requires high-risk multi-disciplinary treatment plans, such as a Soldier receiving care for Behavioral Health, Family Advocacy and substance abuse.

Note: Routine Behavioral Health care would not trigger command notification.

2. Medications That Could Impair Duty Performance.

Example: A Soldier is placed on lithium which can reach toxic levels if the Soldier is dehydrated. Note: A Soldier is not allowed to deploy on lithium.

Example: A Soldier is prescribed a pain medication that impairs his ability to drive a vehicle.

Example: A Soldier is prescribed a number of medications (polypharmacy) which could have an impact on the Soldier's well-being, well-being of others, and/or duty performance.

3. Harm to Mission/Condition Impairs the Soldier's Performance of Duty.

Example: A Soldier becomes delusional or has hallucinations.

Example: A Soldier develops epilepsy.

Example: The provider believes there is a serious risk of harm to a specific military operational mission. Such serious risk may include disorders that significantly impact impulsivity, insight, reliability, and judgment.

4. Special Personnel. The member is in the Personnel Reliability Program or is in a position that has been pre-identified by Service regulation or the command as having mission responsibilities of such potential sensitivity or urgency that normal notification standards would significantly risk mission accomplishment.

5. Substance Abuse Treatment Program. The member has entered into, or is being discharged from, a formal outpatient or inpatient treatment program consistent with AR 600-85 for the treatment of substance abuse or dependence. Those who seek alcohol-

use education, who have not had an alcohol referral incident (such as arrest for driving under the influence) do not require command notification unless they also choose to be formally evaluated and are diagnosed with a substance abuse or dependence disorder. However, those enrolled in the Confidential Alcohol Treatment and Education Program will remain exempt from command notification when receiving a formal evaluation and/or are diagnosed with a substance abuse or dependence disorder.

6. Command-Directed Behavioral Health Evaluation. The behavioral health services are obtained as a result of a command-directed behavioral health evaluation consistent with DoDI 6490.4 (Requirements for Mental Health Evaluations of Members of the Armed Forces) and MEDCOM Regulation 40-38.

7. Injury indicates a safety problem or a battlefield trend.

8. Risk of heat/cold injury.

9. Hospitalization/inpatient care.

10. Seriously ill or very seriously ill.

D. Processes available for notifying a unit command official of a Soldier's condition IAW paragraphs A, B, and C above are shown below. Immediately notify unit command officials when deemed urgent; immediately in AM if non-urgent hospital admission; or in any case not later than 24 hours. Notification may occur by these methods:

1. Use the DD Form 689 (Individual Sick Slip) to provide PHI and give to Soldier to deliver to unit command officials (Disclosure accounting is not required).

2. Use the eProfile system for temporary and permanent profiles.

3. Use the DA Form 3822 (Report of Mental Status Evaluation); place in an envelope marked for the "Commander's Eyes Only" and call the unit to pick up.

4. Personal telephone call between the provider and the company or battalion commander, followed up by written communication, such as eProfile. E-mail may be used as a method to notify command officials of the need to pick up information or contact the MTF designee for information.

5. In making a disclosure pursuant to the circumstances described in subparagraphs C.1. through C.6. of this enclosure, healthcare providers shall provide the minimum amount of information to satisfy the purpose of the disclosure. Healthcare providers are not required to state the medication prescribed or the underlying diagnosis. In general healthcare providers may disclose:

a. A description of the treatment prescribed or planned; impact on duty or mission; recommended duty restrictions; any applicable duty restrictions/limitations; prognosis, and implications for the safety of self or others.

b. Ways the command can support or assist the Service Member's treatment.

E. Procedures for processing unit officials' phone or written requests not connected with a regulatory command management program:

1. Authenticate authority of requester -- phone and written requests must include at least requester's name, official position and signature (written requests).

2. Authenticate reason for request -- requests not connected to regulatory command management program as listed in paragraph B. should pertain only to the Soldier's general health status, adherence with scheduled appointments, profile status and medical readiness requirements.

3. Release minimum necessary information -- only enough for the purpose of the disclosure. Examples follow:

a. General health status – Provide medical status as very seriously ill, seriously ill, or a special category description (see AR 40-400 for descriptions), or as "stable," "good," or "fair", etc. (AR 40-66 for descriptions).

b. Scheduled for Appointment/Appointment Reminders -- Specialist Smith is scheduled for an appointment on (date/time).

c. Kept sick call/appointment -- Specialist Conrad did (or did not) make that appointment.

d. Profile status -- Sergeant Dole should not do any push ups due to his back condition. This is a temporary profile for 30 days.

e. Medical readiness requirements -- Corporal Jones needs a current typhoid shot.

4. Phone requests for information must be followed up with a written request for medical information by the requestor (AR 40-66, paragraph 2-5b.).

F. Procedures for obtaining and releasing PHI of Soldiers hospitalized in civilian hospital. The following best practices will help to achieve consistent results:

1. Establish procedures with local civilian facilities for notification and coordination of PHI release on all admitted military personnel.

2. Establish installation policy under Director of Health Services' authority for unit commanders to request Soldier medical status updates through designated MTF point of contact (i.e., Patient Administration Division, Case Managers).

Your Protected Health Information May Be Shared With Your Commander

In providing your care today, your healthcare provider may determine that your current condition has an impact on your fitness for duty or there is a regulatory requirement that your condition be reported to your Commander. Reporting could include, but not be limited to the following:

1. **Danger:**
   a. To avert a serious and imminent threat to health or safety of yourself or others, such as suicide, homicide, or other violent action.
   b. Injury indicates a safety problem or a battlefield trend.
   c. You are Seriously Ill/Very Seriously Ill.

2. **Drugs:**
   a. Medications that could impair your duty performance.
   b. Substance Abuse Treatment Program: If you have entered into, or are being discharged from, a formal outpatient or inpatient treatment program consistent with AR 600-85 for the treatment of substance abuse or dependence. Those who seek alcohol-use education, who have not had an alcohol referral incident (such as arrest for driving under the influence) do not require command notification unless they also choose to be formally evaluated and are diagnosed with a substance abuse or dependence disorder. However, those enrolled in the Confidential Alcohol Treatment and Education Program will remain exempt from command notification when receiving a formal evaluation and/or are diagnosed with a substance abuse or dependence disorder.

3. **Duty:**
   a. Condition impairing your performance of duty.
   b. Special Personnel: If you are in the Personnel Reliability Program or in a position that has been pre-identified by Service regulation or the command as having mission responsibilities of such potential sensitivity or urgency that normal notification standards would significantly risk mission accomplishment.
   c. You are hospitalized.

4. **Directed:** Command-Directed Behavioral health Evaluation. The behavioral health services are obtained as a result of a command-directed behavioral health evaluation consistent with DoDI 6490.4 (Requirements for Mental Health Evaluations of Members of the Armed Forces) and MEDCOM Regulation 40-38.

5. **Deployment Limiting:**
   a. Profile limitations.
   b. Immunizations needed.
   c. Medical Evaluation Board/Physical Evaluation Board information.
   d. Risk of heat/cold injury.
   e. **Deployment** Implications of **Drugs** and **Duty** limitations.

6. **Diet:** Army weight control program documentation.

Should you have questions regarding the release of your protected health information to your Commander, talk to your healthcare provider, the Patient Administration Division, or the Health Insurance Portability and Accountability Act Privacy Officer at your medical/dental treatment facility.