

Department of Veterans Affairs

Employee Education System

And

VHA Office of Health Information and Informatics

Present

VHA Privacy Policy Training

Text Version

FY09

October 1, 2008-September 27, 2009

Revised September 2008

## VHA Privacy Policy Training

### Introduction

The Veterans Health Administration (VHA) has carefully guarded the privacy of the veterans and their records. In 2000 new privacy rules were published requiring every health care provider and health plan to revise its policies, including the VHA. It also requires that ALL VHA employees, including volunteers, students, medical residents, and some contractors be trained in these policies. The training must be completed annually. This course will help you learn the basic information you need to know to complete this requirement and carry out your responsibility to protect veteran privacy.

### Why I am required to take this course?

- It will help you understand that the privacy laws apply to you and all other Veterans Health Administration (VHA) employees, even if you do not have direct patient contact or access to any patient data.
- To meet the legal requirements for all VHA staff to obtain training on the privacy policy rules.

### How long will it take me to finish the course?

- The course will take you about 50-90 minutes to read through all 7 modules.

### Is there a deadline for me to finish the course?

- Each employee is required to take the course annually, usually by the end of the fiscal year.
- All new employees must finish the course within 30 days of being hired.

### How do I report my training?

You will read all pages of this text version of VHA Privacy Policy Training – FY09, and then report your completion to you supervisor, your local privacy officer or your facility education office. The Employee Education System does not provide a certificate for this text version of the privacy training. There must be a record of your course completion on file at your facility.

### How do I get help if I need it?

If you are having trouble reading or understanding the text version, please ask for help from your supervisor or your facility Privacy Officer.

Who wrote this training?

VHA Privacy Office experts wrote this training; it is based on VHA Handbook 1605.1, Privacy and Release of Information.

Department of Veterans Affairs Employee Education System and

VHA Office of Health Information and Informatics Present

VHA PRIVACY POLICY TRAINING – FY09

Text Version

Department of Veterans Affairs Employee Education System

Course Number: 07.MN.RP.PRIV.A

October 2008-September 2009

Place:

Read this text version of the training to meet your annual VHA Privacy Policy training requirements. If you have access to the Internet or the VA Intranet, this training may be taken as a web-based training program available at

<https://www.lms.va.gov> (LMS Item #10203).

Purpose:

The purpose of this training is to provide you with the required knowledge about the VHA Privacy Policies, including VHA Handbook 1605.1, Privacy and Release of Information that encompasses the Privacy Act and Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. This is a mandated annual training requirement for all VHA employees.

Training Information:

This text version is similar to the basic information contained in the web-based training. The training has been designed to take approximately one hour. The text version of the course may be printed and distributed for those who do not have access the VA Intranet or Internet.

### Outcome Objectives:

Upon completion of this training, each participant will be able to identify:

1. Background and scope of applicable privacy and confidentiality statutes and regulations;
2. Rights granted to veterans by the Privacy Act and HIPAA Privacy Rule;
3. Disclosure purposes that do not require prior written authorization from the veteran;
4. Disclosure purposes that require prior written authorization from the veteran;
5. Information that can be disclosed to another provider for the provision of treatment;
6. General requirements of the management of the release of Veteran information, and
7. Elements of the Freedom of Information Act (FOIA).

### Target Audience:

All VHA employees including medical residents, students, and contractors are required to complete VHA Privacy Training annually.

Employees who do not have access to patient information or Protected Health Information (PHI) as a part of their job, may view a video called "Privacy: It's Everyone's Business" or "Protecting those who have Protected Us" available in each VHA library or from your facility privacy officer. Volunteers may also view this video or read this text version to complete their annual requirement.

Medical residents, students, interns, clerks, therapists, basically anyone who has contact with patients may view the video "VHA Provider Privacy Training". Contact your facility Privacy Officer to view the video.

### Report of Training:

It is your responsibility to ensure that this training is documented in the appropriate location according to your local facility process.

## Privacy Training Modules:

### Module 1 – Privacy and Release of Information

#### Objectives

When you have completed this module you will be able to identify:

- Six statutes that govern the collection, maintenance, and release of information from VHA records.
- The scope of privacy regulations including compliance, use of information, disclosure of information, and safeguards.

### Module 2 – Veterans Rights

#### Objectives

When you have completed this module you will be able to identify:

- Rights granted to veterans by the Privacy Act and the HIPAA Privacy Rule.
- Rights of deceased veterans.

### Module 3 – Uses of Information within VA

#### Objectives

When you have completed this module you will be able to identify:

- The terms of compliance for disclosure of information used for treatment, payment and health operations.
- The terms of compliance of disclosure for research purposes.
- The terms of compliance of disclosure for purposes other than treatment, payment, and/or healthcare.
- The process of release of information from non-VHA Systems of Records.

### Module 4 – Purposes Requiring Authorization

#### Objectives

When you have completed this module you will be able to identify:

- The requirements that state when prior written authorization is necessary for disclosure of information.
- How to process a request for disclosure of a record.
- Various types of disclosures and releases requiring authorization.

## Module 5 – Release of Information Outside of VA

### Objectives

When you have completed this module you will be able to identify:

- The definition of disclosure.
- Disclosure procedures for non-VA entities.

## Module 6 – Operational Privacy Requirements

### Objectives

When you have completed this module you will be able to identify:

- General requirements for operational management ensuring privacy when releasing information.
- Requirements for establishing new systems of records under the Privacy Act.
- Requirements governing the conduct of VA computer matching programs.

## Module 7 – Freedom of Information Act (FOIA)

### Objective

When you have completed this module you will be able to identify:

- Elements of the Freedom of Information Act.

**Deadline Date:** All VHA employees, volunteers, medical residents, students and some contractors must complete VHA Privacy Policy training on an annual basis. New employees will receive training during orientation within 30 days of being hired. The text and web-based version of the training are updated annually.

**The Rehabilitation Act of 1973, as Amended:** The Employee Education System wishes to ensure no individual with a disability is excluded, denied services, segregated or otherwise treated differently from other individuals participating in its educational activities, because of the absence of auxiliary aids and services.

Contact the project manager listed below if you need assistance.

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EES requires disclosure to the participants. Each faculty and planning committee member (author, facilitator, or moderator) reported having no financial relationships or interests with any commercial topics that are discussed in this program. This activity includes no discussion of uses of FDA regulated drugs or medical devices which are experimental or off-label.

TEXT VERSION CONTENT OF VHA PRIVACY TRAINING STARTS HERE:

## Module One: Privacy and Release of Information

In this module you will learn the background and scope of applicable privacy and confidentiality statutes and regulations. Specifically you will learn the:

- Six statutes that govern the collection, maintenance, and release of information from Veterans Health Administration (VHA) records, and
- Scope of privacy regulations including compliance, use of information, disclosure of information and safeguards.

### Privacy Statutes

VHA must comply with all applicable privacy and confidentiality statutes and regulations. Specifically, there are six statutes that govern the collection, maintenance and release of information generally from VHA records.

The VHA Handbook 1605.1, Privacy and Release of Information, establishes guidance on privacy practices and provides VHA policy for the use and disclosure of individually identifiable information and individuals' rights in regard to VHA data. When following VHA privacy policies, all six statutes are to be applied simultaneously. VA health care facilities should comply with all statutes so that the result will be application of the most stringent provision for all uses and/or disclosures of data and in the exercise of the greatest rights for the individual.

- The Freedom of Information Act (FOIA), 5 U.S.C. 552
- The Privacy Act (PA), 5 U.S.C. 552a
- The VA Claims Confidentiality Statute, 38 U.S.C. 5701
- Confidentiality of Drug Abuse, Alcoholism and Alcohol Abuse, Infection With the Human Immunodeficiency Virus (HIV), and Sickle Cell Anemia Medical Records, 38 U.S.C. 7332
- The Health Insurance Portability and Accountability Act (HIPAA)
- Confidentiality of Healthcare Quality Assurance Review Records, 38 U.S.C. 5705

### Compliance

The scope and applicable privacy and confidentiality statutes and regulations are described in the content that follows.

All VHA employees shall comply with all Federal laws, regulations, VA and VHA policies. Employees shall conduct themselves in accordance with the rules of conduct concerning the disclosure or use of information in the VA Standards of Ethical Conduct and Related Responsibilities of Employees.

Employees who have access to VHA records shall be instructed on an ongoing basis about the requirements of Federal privacy and information laws, regulations, VA and VHA policy.

The Privacy Act requires that information about individuals that is retrieved by a personal identifier may not be collected or maintained until proper notifications are given to Congress, the Office of Management and Budget (OMB), and published in the Federal Register. Each Veterans Integrated Service Network (VISN) and VA Medical Center or VA Health Care System shall designate a Privacy Officer and a Freedom of Information Act (FOIA) Officer.

#### De-identified Information

De-identified information is not considered to be individually identifiable; therefore, the provisions of the Privacy Act, HIPAA, and VA Confidentiality statutes do not apply. VHA considers health information not individually identifiable only if:

- An experienced statistician determines the risk that the information can be used to identify an individual is very small.
- Identifiers of the individual or of relatives, employers or household members of the individual are removed from the information (See VHA Handbook 1605.1, Privacy and Release of Information, Appendix B).

NOTE: Scrambling of names and social security numbers is not considered de-identifying health information.

#### Use of Information

VHA employees must use or access information only as legally permissible under applicable confidentiality and privacy laws, regulations, and policies. All VHA employees can use health information contained in VHA records in the official performance of their duties for treatment, payment, and health care operations purposes. However, VHA employees must only access or use the minimum amount of information necessary to fulfill or complete their official VA duties.

Note: (Per OGC Advisory 80-90) – There is NO authority under the HIPAA Privacy Rule for the disclosure of a VA employee's VAMC medical record to management or personnel officials for disciplinary investigation purposes without prior written authorization.

The use of health information for other purposes such as research requires additional authority such as the veteran's written authorization. This is a change from past practice.

VHA employees may use a limited data set for the purpose of research, public health, or health care operations. Contact the local privacy officer or the VHA Privacy Officer for guidance on limited data sets.

## Disclosure of Information

VHA employees can disclose individually identifiable information from official VHA records only when:

- VHA has first obtained the prior written authorization of the individual who the information pertains to, or
- Other legal authority permits the disclosure without written authorization.

Individually identifiable information should be disclosed to requestors with the understanding that the information is confidential and should be handled with appropriate sensitivity.

VHA may disclose individually identifiable information related to VHA treatment of drug abuse, alcoholism, and sickle cell anemia, and testing or treatment for HIV only when 38 U.S.C. Section 7332 also permits the disclosure.

## Safeguards

VHA employees shall ensure appropriate controls are followed to safeguard individually identifiable information, including protected health information, from loss, defacement and tampering and to ensure the confidentiality of information.

Additionally, each health care facility will make certain appropriate administrative, technical, and physical safeguards are established:

- To ensure the security and confidentiality of individually identifiable information/records including protected health information/records, and
- To protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

## Module Summary

In this module you learned about:

- The six statutes that govern the collection, maintenance, and release of information from VHA records, and
- The scope of privacy regulations.

## Module Two: Individual's Rights

In this module you will learn the rights granted to veterans by the Privacy Act and HIPAA Privacy Rule. Specifically, you will learn the veteran's right to

- Notice of privacy policies

- A copy of their own individually identifiable information,
- Request an amendment to personal records,
- Disclosure of information from personal records,
- Request and receive communications confidentially,
- Request restriction of use or disclosure of records, and
- Disclosure when deceased.

At the end of this module, you will be able to identify the rights granted to veterans by the Privacy Act and HIPAA Privacy Rule.

#### Notice of Privacy Policy

A veteran has the right to receive a copy of the VA Notice of Privacy Practices. This notice includes the uses and disclosures of his/her protected health information that may be made by VHA, as well as the individual's rights, and VHA's legal duties with respect to protected health information. There is one Notice of Privacy Practices for all of VHA. If you wish to access a copy of this notice, copy and paste this address into your web browser.

[http://www1.va.gov/vhapublications/ViewPublication.asp?pub\\_ID=1089](http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1089).

Any individual who has questions or needs additional information regarding the Notice of Privacy Practices should be referred to the VA health care facility Privacy Officer or call VA Health Revenue Center at 1-877-222-8387 or <http://www.va.gov>.

#### Right to a Copy

A veteran has a right to obtain a copy of his or her own record. A veteran's request for a copy of his or her record must be submitted in writing to the VHA facility with the record and must be signed. Except for rare circumstances, veterans may gain access to any information pertaining to them that is contained in any system of records. Veterans do not have to state a reason or provide justification for wanting to see or to obtain a copy of the requested information.

All requests for copies will be delivered to, and reviewed by, the facility Privacy Officer or designee. VA employees should refer all requests from veterans for copies of their records to the Release of Information Office or to another appropriate office who has a mechanism in place to track those disclosures.

Denial or refusal to provide a veteran a copy of his record should be at a minimal. If a denial or refusal is done, a letter must be sent to the veteran in that provides the veteran his appeal rights to the Office of General Counsel.

For more information see the VHA Handbook 1605.1, Privacy and Release of Information, Individual's Right of Access, or contact your facility Privacy Officer.

## Right to Request an Amendment

The veteran has the right to request an amendment to any information in his/her record. The request must be in writing and adequately describes the specific information the veteran believes to be inaccurate, incomplete, irrelevant, or untimely; and the reason for this belief. The written request should be mailed or delivered to the VA health care facility that maintains the record. The VA health care facility Privacy Officer will review and process the request. Requests should be processed within specific timeframes.

If the veteran requests amendment of clinical or health information in a medical record, the facility Privacy Officer will refer the request and related record to the health care provider or physician who is the author of the information to determine if the record should be amended. When a request to amend a record is approved, the Privacy Officer will complete the process. The veteran will be advised that their request has been approved and amendment changes will be recorded on the original document.

When a request to amend a record is denied, the Privacy Officer will promptly notify the veteran making the request of the facility's decision. The written notification must state the reasons for the denial and should outline the veteran's right to appeal the decision.

For more information see the VHA Handbook 1605.1, Privacy and Release of Information, Individual's Right to Request an Amendment, or contact your facility Privacy Officer.

## Accounting of Disclosures

A veteran may request a list of all written disclosures of information, from his/her records. VHA facilities and programs are required to keep an accurate accounting for each disclosure of a record made to any person or to another agency. An accounting is not required to be maintained in certain circumstances, including when disclosure is to VHA employees who have a need for the information in the performance of their official duties for treatment, payment, and health care operations.

The request for an accounting of disclosures must be in writing and adequately identify the VHA system of records for which the accounting is requested. The written request should be mailed or delivered to the VA health care facility that maintains the record. A request for an accounting of disclosures should be delivered to the Privacy Officer or designee for processing.

## Confidential Communications

The veteran has the right to request and receive communications confidentially from VHA by an alternative means or at an alternative location. VHA considers an alternative means to be an in person request, and an alternative location to be an address other than the individual's permanent address listed in Veterans Health Information Systems and Technology Architecture (Vista).

VHA shall accommodate reasonable requests from the individual to receive communications at an alternative address entered in Vista for one of the five correspondence types below:

- Eligibility or enrollment,

- Appointment or scheduling,
- Co-payments or veteran billing,
- Medical records, and
- All other.

Requests to split communications under a correspondence type will be considered unreasonable and therefore denied (all or none to one address). All requests for confidential communication to be done via email will be denied.

### Right to Request Restriction

The veteran has the right to request VHA restrict its use or disclosure of individually identifiable health information to carry out treatment, payment, or health care operations. The veteran also has the right to request VHA restrict the disclosure of individually identifiable health information (IIHI) to the next of kin, family, or significant others involved in the individual's care. This request must be in writing and be signed by the veteran.

VHA is not required to agree to such restrictions, but if it does, VHA must adhere to the restrictions to which it has agreed. All requests that the Privacy Officer is making a determination about granting are to be referred to the VHA Privacy Officer for consultation.

### Rights of Deceased Individuals

VHA employees must protect IIHI about a deceased individual in the same manner and to the same extent as required for the IIHI of living individuals for as long as VHA maintains the records.

However, the personal representative (e.g. Executor of the Estate) of a deceased individual has the same rights as the deceased individual. VHA employees must disclose the IIHI of the deceased individual under the right of access provisions to the personal representative. A personal representative may also request amendments to the deceased individual's records. For additional information refer to Chapter 5 in VHA Handbook 1605.1, Privacy and Release of Information.

### Module Summary

In this module you learned about:

- The rights granted to veterans by the Privacy Act and the HIPAA Privacy Rule,
- The rights of deceased veteran.

## Module Three: Purposes Requiring No Authorization

In this module you will learn the disclosure purposes for release of individually identifiable information within VA that requires no authorization from the veteran. Specifically you will learn:

- Compliance measures for the disclosure of information regarding treatment, payment and health care operations,
- Compliance measures for the disclosure of information for research purposes,
- Compliance measure for the disclosure of information for purposes other than treatment, payment, and health care operations, and
- The process for releasing information from non-VHA Systems of Records.

At the end of this module you will be able to identify the disclosure purposes that do not require authorization from the veteran.

### Use and Disclosure

The authority for sharing information for treatment, payment, and healthcare operations for use within VA and disclosure outside VA are dependent upon the requesting party.

- VHA
- VA Entities
- VA Contractors
- Non-VA entities

### Intramural Research

All Research within VHA must be conducted by a VHA investigator who is a VHA employee. A Research and Development (R&D) Committee must approval all research activities conducted by VHA investigators.

VHA individually identifiable health information involving non-employee research subjects may be used by a VHA Investigator for research purposes provided:

- There is a prior written authorization signed by the research subject. A prior written authorization may be incorporated into an informed consent for participation in research, or
- If there is no prior written authorization, there is an Institutional Review Board (IRB) or Privacy Board waiver of authorization.

VHA individually identifiable information involving employee research subjects only may be used by a VHA investigator for all official research purposes without authorization.

## Extramural Research

VHA has the authority to disclose individually identifiable information to non-VHA Investigators.

VHA may disclose the individually identifiable health information of research subjects who are not VHA employees to non-VHA Investigators for research purposes provided there is a prior written authorization. A prior written authorization may be incorporated into an informed authorization notice (e.g. Consent to Participate).

If there is no prior written authorization, the authority for disclosing the data for research becomes complicated depending on the requestor. For additional information see VHA Handbook 1605.1, Privacy and Release of Information.

VHA may disclose the individually identifiable information of research subjects who are VHA employees, including employee health information, to non-VHA Investigators for research purposes without written authorization, subject to certain provisions.

## VA Entities

The VHA Handbook 1605.1, Privacy and Release of Information regulates the disclosure of individually identifiable information from VHA records to VA entities without prior written authorization for purposes other than treatment, payment, or healthcare operations. Some VA entities are included below:

- VA Contractors
- Contract Nursing Homes
- Office of General Counsel
- Inspector General
- Office of Resolution Management
- Veterans Benefits Administration (VBA)
- Board of Veterans Appeals (BVA)
- National Cemetery Administration (NCA)
- Office of Employment Discrimination, Complaints and Adjudication (OEDCA)
- Unions
- VA Human Resources Management Services (HRMS)
- VA Police and Security Service

## Release of Information from Non VHA System of Records

Within VHA facilities there are several non-VHA systems of records that are subject to the provisions of the Privacy Act of 1974, VA confidentiality statutes and/or HIPAA.

For example, VHA employees generate medical records regarding a patient's claim for disability; these medical disability records are technically under the control of the local VBA Regional Office. Please see the VHA Handbook 1605.1, Privacy and Release of Information, Appendix C for a list of all non-VHA systems of records that are normally maintained within a VHA facility.

It is the policy of VHA that should a question arise concerning right of access, amendment or release of non-VHA records/information, the non-VHA System Manager (e.g., VBA, HRMS) who has responsibility over these records will be contacted. Whether or not right of access, amendment or release of the information is granted will be determined based on federal privacy and confidentiality statutes, VA regulations, and official policies of the non-VHA entity.

Facility Privacy Officers should work with these offices to determine how to process such requests.

### Module Summary

In this module you learned about:

- The compliance of disclosure of information for treatment, payment and health operations,
- The compliance of disclosure for research purposes,
- The compliance of disclosure for purposes other than treatment, payment, and/or health care, and
- The process of release of information from non-VHA Systems of Records.

### Module Four: Purposes Requiring Authorization

In this module you will learn the disclosure purposes for release of individually identifiable information that requires authorization from the veteran. Specifically you will learn:

- When written authorization is necessary for the disclosure of information,
- How to process a disclosure request, and
- The various types of disclosures and releases requiring authorization (Note: Not all types of disclosures discussed in this module require authorization, e.g. Audit and Evaluation disclosures.)

At the end of this module, you will be able to identify the disclosure purposes that require authorization from the veteran.

### Authorization Requirements

A written authorization signed by the individual to whom the information or record pertains is required when VA health care facilities:

- Need to utilize individually identifiable health information for a purpose other than treatment, payment, and/or health care operations and other authority does not exist;
- Disclose information for any purpose where other legal authority does not exist;
- To conduct marketing.

When an authorization of the individual is required for use or release of individually identifiable information, the request and authorization must be in writing, contain an expiration date or event, identify the individual to whom the requested information pertains, identify the permitted recipient or user, describe the information requested, and contain the signature of the individual whose records will be used or disclosed.

#### Additional Authorization Requirements

Authorization may be given on VA Form 10-5345 Request for and Authorization to Release Medical Records or Health Information, or using VA Form 10-5345a Individuals' Request for a Copy of their Own Health Information, or a written request signed by the individual.

The authorization will be considered invalid if any of the following statements about the authorization are true:

- Fails to meet all of the content requirements,
- It has expired,
- Is known to have been revoked,
- Or is known to be false with respect to the authorization requirements,

Unless it is explicitly covered in the authorization, information regarding HIV, sickle cell anemia, or drug/alcohol treatment must not be disclosed.

#### Processing a Request for Disclosure

Individuals or third parties may request VHA to disclose any record. The following outlines how a disclosure request should be processed:

- The request must be in writing and describe the record sought so it may be located in a reasonable amount of time.
- If the requestor is the individual to whom the records pertain, follow the guidelines as discussed in Module 2.
- If the requestor is other than the individual to whom the records pertain (third party), determine what information or record is requested and for what purpose:
- If the record requested does not contain individually identifiable information, process the request in accordance with FOIA policy as discussed in Module 7.

- If the record requested contains individually identifiable information, VHA employees should review the applicable paragraphs of the VHA Handbook 1605.1, Privacy and Release of Information for guidance.
- VHA employees should process requests from a third party for individually identifiable information within the time standards (e.g. 20 workdays) and charge the applicable fees as outlined in the VHA handbook.

If the policy for a request for individually identifiable information is unclear, VHA employees should contact their facility Privacy Officer.

#### Other Disclosures Requiring Authorization

VHA has several policies for the disclosure of individually identifiable information for certain purposes. Discussed below is the VHA disclosure policy for the release of information from claims folders, providing medical opinions, and release of psychotherapy notes.

Requests for release of medical or health information in veterans' claims folders are normally handled by the FOIA/PA Officers at Veterans Benefits Administration (VBA) Regional Offices.

VHA health care providers are required, when requested, to provide descriptive statements and opinions for VA patients with respect to patients' medical condition, employability, and degree of disability.

VHA employees may use psychotherapy notes to carry out treatment, payment, and/or health care operations; to train students or participants in mental health programs; and in defense of a legal action. VHA employees may not disclose psychotherapy notes for any other purpose without the prior written authorization of the individual to whom the notes pertain. Psychotherapy notes are different from mental health progress notes. For additional information contact your facility Privacy Officer.

#### Module Summary

In this module you learned about:

- When written authorization is necessary for disclosure of information,
- Processing a request for disclosure, and
- Various types of disclosures and releases requiring authorization.

#### Module Five: Release of Information Outside of VA

In this module you will learn information that can be disclosed to non-VA entities. Specifically you will learn:

- Information that can be disclosed with or without an individual's authorization,

- Information that can be disclosed to non-VA entities such as Congress, courts of law, law enforcement, family members, non-VA health providers, other federal agencies, public health authorities, state veterans homes, and Veteran Service Organizations (VSO).
- Information can be disclosed to a non-VA organization or entity.

### Individual Authorization

If VHA employees receive a request for individually identifiable information that is accompanied by a valid written authorization, disclosure should be made in accordance with the authorization.

When a valid written request, signed by the individual is made, every attempt to provide the disclosure should be made, unless the information requested is deemed sensitive. Follow VHA Handbook 1605.1, Privacy and Release of Information Appendix D “How to Process a Request for Access to Individually Identifiable Information When the Request Includes Access to Sensitive Information”.

Before making a disclosure of any individually identifiable information (including health information) to an outside entity without an individual's authorization, VHA employees should determine:

- The type of information involved, and
- Whether legal authority exists under the statutes and regulations to permit the disclosure. See your facility Privacy Officer if you have questions.

If legal authority is not found in all applicable statutes and regulations, VHA employees may not make the disclosure.

Disclosure is not mandatory under these provisions, and in questionable situations, the signed authorization of the individual should be obtained.

### Non-VA Entities

Information can be disclosed to various non-VA entities.

- Congress
- Courts of Law
- Family Members
- Law Enforcement
- Medical Care Cost Recovery
- Non-VA Health Providers
- Organ Procurement Organizations (OPO)
- Other Non-VA Entities

- Public Health Authorities
- State Veterans Homes And Veterans Service Organizations (VSO)

#### Congress

- VHA may disclose individually identifiable information, including health information, to a member of Congress, when responding to an inquiry from a congressional office that is made at the request of the individual to whom the information pertains. If prior written authorization form has not been provided, the member of congress needs to provide a copy of their original correspondence.
- Individually identifiable information, including health information may be disclosed to the Chair of the Veterans' Affairs Committee or Subcommittee of the House of Representatives or the United States Senate without the individual's written authorization when the request for information is made part of the Committee oversight functions.

VHA employees may not disclose individually identifiable information upon an inquiry from a Member of Congress on behalf of the veteran by a third party (e.g., veteran's son) without an appropriate authorization.

Disclosure of health information requires written authorization for a purpose other than described above.

#### Courts, Quasi-Judicial Bodies and Attorneys

VHA employees may disclose individually identifiable information including health information pursuant to a court order from a Federal, State, or local court of competent jurisdiction. Refer to VHA Handbook 1605.01 Privacy and Release of Information Chapter 20 for further guidance.

A subpoena is not a court order and cannot be used to compel disclosure except in certain situations. Any subpoena for information received should be discussed with the facility Privacy Officer.

The disclosure of individually identifiable information to courts, quasi-judicial bodies and attorneys without a court order is dependent on information requested and the purpose for the disclosure. Refer to VHA Handbook 1605.1, Privacy and Release of Information for further guidance.

#### Routine Reporting to Law Enforcement Entities Pursuant to Standing Request Letters

Individually identifiable information, excluding 38 U.S.C. 7332-protected information, may be disclosed to officials of any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of public health or safety only as authorized by law. (See VHA Handbook 1605.1, Privacy and Release of Information, Paragraph 21, for additional information.)

The health care facility Director will acknowledge the receipt of an agency's standing request and advise the agency of the penalties regarding the misuse of the information. The standing request must be updated in writing every 3 years.

- Reporting Specific Criminal Activity
- Parole Office
- Identification and Location of Criminals
- Breath Analysis and Blood Alcohol Test
- Serious Threat to the Individual or Public

#### Next-of-Kin, Family and Significant Others

VHA employees may disclose the following information to the next of kin, family, or significant other of an individual without prior written authorization:

- General information on the individual's condition and location if in the Facility Directory,
- Individually identifiable information including health information when in the presence of the individual,
- Individually identifiable information including health information outside the presence of the individual when it is determined the disclosure is in the best interests of the individual, and
- HIV Status may be disclosed to the individual's spouse or sexual partner if certain conditions are met.

#### Non-VA Health Care Provider

VHA may disclose individually identifiable information, excluding 38 U.S.C. 7332, protected information to resident care homes, assisted living facilities, and home health services for the purpose of health care referrals.

VHA may disclose individually identifiable health information, excluding 38 U.S.C. 7332 protected information, to a non-VA health care provider (physicians or hospital), for treatment purposes.

VHA may disclose individually identifiable health information; excluding 38 U.S.C. 7332 protected information, to a non-VA health care provider for the purposes of VA paying for services.

VHA may disclose individually identifiable information, including health information, to a non-VA provider caring for an individual under emergent conditions.

#### Organ Procurement Organization (OPO)

VHA may disclose relevant health information, including 38 U.S.C 7332 protected- information and the name and address for the patient to the local Organ Procurement Organization (OPO), or other entity

designated by the OPO for the purpose of determining suitability of a patient's organs or tissues for organ donation as long as VHA Directive 2001-027 Organ Transplant is followed

#### Medical Care Cost Recovery

To recover or collect the cost of medical care from third-party health plan contracts, individually identifiable health information that is required by the health plan contract may be disclosed to the insurance carrier. A written authorization is required to disclose 38 U.S.C. 7332 –protected information such as HIV, Sickle Cell Anemia and Drug and Alcohol Abuse which includes the treatment for or the refusal of treatment for billing.

VHA may contract for services to collect a debt owed to VHA. Individually Identifiable Information may be provided to a contracted collection agency without an authorization for this purpose. See VHA Handbook 1605.1, Privacy and Release of Information Chapter 22 for further guidance.

#### Public Health Authorities

VHA employees may disclose individually identifiable information, excluding 38 U.S.C. 7332, protected information, to Federal, State, and/or local public health authorities charged with the protection of the public health or safety pursuant to a standing request or other applicable legal authority.

An individual's infection with HIV may be disclosed from a record to a Federal, State, or local public health authority that is charged under Federal or State law with the protection of the public health.

VHA employees may disclose individually identifiable information including health information to the Food and Drug Administration (FDA) for the purpose of routine reporting and to carry out program oversight duties upon their official written request.

#### State Veterans Homes

VHA employees may disclose individually identifiable health information, excluding 38 U.S.C. 7332 - protected information, to a State Veterans Home for the purpose of medical treatment and/or follow-up at the State Home. VHA employees may disclose 38 U.S.C. 7332 - protected information to a State Veterans Home only with the written authorization of the individual.

#### Veteran Service Organizations (VSO)

VHA employees may disclose individually identifiable information including health information to a Veterans Service Organization for purposes of obtaining benefits provided an appropriate Power of Attorney or a written authorization from the individual has been filed with the VA health care facility that maintains the information. For additional information on VSO's requesting access to CPRS refer to the VHA Privacy Office web site at <http://vaww.vhaco.va.gov/privacy/HIA.htm>

## Other Non-VA Entities

VHA may also disclose individually identifiable health information to other non-VA entities such as:

- Other Government Agencies
- Public registries
- State Cancer registries
- Private registries

For additional information see VHA Handbook 1605.1 Privacy and Release of Information

## Module Summary

In this module you learned about:

- Requests for disclosure with or without an individual's authorization, and
- Disclosure procedures to non-VA entities.

## Module Six: Operational Privacy Requirements

In this module you will learn the general requirements for operational management when releasing individually identifiable information. Specifically you will learn:

- General requirements for privacy management during accounting disclosures, complaints, faxes, email, health information from non-VA physicians and facilities, training of employees, delegation of a Privacy Officer, contracts and penalties,
- Requirements for establishing new systems of records, and
- Requirements governing the conduct of VA computer matching programs.

At the end of this module you will be able to identify the general requirements for the operational management ensuring privacy when releasing veteran information.

## Agency Accounting of Disclosure Responsibilities

VA health care facilities are required to maintain an accounting of all disclosures. The accounting will:

- Include the date of each disclosure, nature or description of the individually identifiable information disclosed, purpose of each disclosure, and the name and, if known, address of the person or agency to whom the disclosure was made.

- Be retained for 6 years after the date of disclosure or for the life of the record whichever is longer.

## Complaints

Individuals have the right to file a complaint regarding VHA privacy practices. The complaint does not have to be in writing, though it is recommended. All complaints, regardless of validity, must be promptly investigated and a written response provided to the complainant. In addition, all privacy complaints, observations and incidents, must be reported in the Privacy Violation Tracking System (PVTS) . This is for audit purposes in accordance with VA Directive 6502 VA Privacy Program, and VHA Handbook 6502.1 PVTS. Complaints and observations do not require completion of a FERET.

In addition any Health and Human Services Office of Civil Rights (HHS OCR) complaints should be forwarded immediately to the VHA Privacy Office upon receipt of the complaint. The VHA Privacy Office will contact the Privacy Officer via a conference call.

## Incidents

An incident is the act of violating an explicit or implied security policy including the notification of a suspected or actual loss, theft or inappropriate disclosure of personal identifiable information. Some steps to take to avoid an incident include using PKI or RMS prior to sending protected health information (PHI) via email, or double checking the name and address of the documents you are mailing to a veteran prior to them being sent. When VHA employees discover an incident they are obligated to report these incidents to the facility Privacy Officer and/or the Information Security so that they can be reported in PVTS and a FERET can be completed

## Faxes

- VA health care facilities should only transmit individually identifiable information via facsimile (Fax), when no other means exists to provide the required information in a reasonable manner or time frame.
- VA health care facilities need to ensure individually identifiable information is sent on a machine that is in a secure locations and not accessible to the general public.

The VA health care facility shall take reasonable steps to ensure the fax transmission is sent to the appropriate destination (e.g. call the requestor to ensure receipt). A confidentiality statement should be on the cover page when transmitting individually identifiable information. The statement should instruct the recipient of the transmission to notify VHA if received in error.

## Email

Email messages must contain only non-individually identifiable information unless the data is encrypted. Contact your facility Information Security Officer (ISO) for additional guidance and VA Handbook 6500 Information Security Program.

## Contracts

Any contract between VHA and a contractor for the design, development, operation, or maintenance of a VHA system of records or any contract that necessitates the creation, maintenance, use, or disclosure of individually identifiable information will conform to the Federal Acquisition Regulations (FAR).

Organizations or individuals with whom VHA has a contract for services on behalf of VHA where individually identifiable health information is provided to, or generated by, the contractors are considered business associates (See VHA Handbook 1605.1, Privacy and Release of Information, Appendix A). Business associates must follow the privacy policies and practices of VHA.

All contractors and business associates and their employees must receive privacy training.

## Penalties

Individuals who are convicted of knowingly and willfully violating the penalty provisions of the Privacy Act shall be guilty of a misdemeanor and fined not more than \$5,000.

In the event a health care facility employee is found criminally liable of Privacy violation, a written report of the incident will be provided to the VA health care facility Director.

Any person who violates any provision of 38 U.S.C. 7332 shall be fined not more than \$5,000 in the case of a first offense, and not more than \$20,000 in each subsequent offense.

A VHA employee who knowingly violates the provisions of HIPAA by disclosing individually identifiable health information shall be fined not more than \$50,000, imprisoned not more than one year, or both. Offenses committed under false pretenses or with the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain or malicious harm have more stringent penalties.

In addition to the statutory penalties for the violations described above, administrative, disciplinary or other adverse actions (e.g., admonishment, reprimand, and/or termination) may be taken against employees who violate the statutory provisions.

## Health Information from Non-VA Physicians and Facilities

The Chief, HIMS, or designee, is responsible for the prompt dispatch of requests for health information available from outside sources and needed in the examination and treatment of VHA patients. Upon receipt, requested material must be made available to the health care practitioner without delay, when possible. If the material is received in an electronic format, i.e., Compact Disk (CD), then the Chief, HIMS, or designee, should work with the facility Information Resource Management Service (IRMS) to check the CD for viruses and to ensure the facility has the appropriate software to open the files for review.

The health care practitioner must review the material to determine if inclusion in the individual's health record is warranted. If the health care practitioner determines the material should be included in the individual's health records, the Chief, HIMS, or designee, should determine the appropriate manner for inclusion in accordance with VHA Handbook 1907.1.

## Training of Personnel

All VHA personnel including employees, volunteers, and students must be trained, at least annually, on privacy policies to include the requirements of Federal privacy and information laws, regulations, and VHA policy. New personnel must be trained within 30 days of employment. At a minimum, instruction must be provided within 6 months of significant change in Federal law, regulation, this policy, and/or facility or office procedures. VA health care facilities must track completion of privacy training and be prepared to report privacy training completion figures to the VHA Privacy Office.

## Designation of Privacy Official

Each VISN and VA medical center must designate a facility Privacy Officer. The Privacy Officer duties may be collateral if the size and complexity of the facility do not warrant the need for a full time Privacy Officer.

## Establishing New Systems of Records Under the Privacy Act

When personal information is retrieved by an individual identifier, a system of records (SOR) subject to the Privacy Act comes into existence. The Privacy Act requires agencies to publish notices in the Federal Register describing new or altered systems of records.

Information concerning an individual cannot be collected or maintained in such a manner that information is retrieved by an individual identifier unless a system notice is first published in the Federal Register.

A list of published VHA systems of records only can be obtained at

<http://vaww.vhaco.va.gov/privacy/>

You will only be able to access this address through the VA Intranet.

## Requirements Governing the Conduct of Computer Matching Programs

The Privacy Act covers the computerized comparison of records from:

- Two or more automated systems of records, and
- A Federal agency's automated system of records and automated records maintained by a non-federal (State or local government) agency.
- For additional information on computer matching programs contact the VHA Information Access and Privacy Office.

VA health care facilities will not participate in computer matching programs with other Federal agencies or non-Federal agencies as a "recipient agency" or a "source agency" unless the program is approved by the VA health care facility Director, VHA Privacy Officer, appropriate VA Central Office staff, and the VA

Data Integrity Board and conducted in compliance with the Privacy Act (as amended by the Computer Matching Act), the OMB guidelines (65 FR 77677, December 12, 2000) and applicable Department guidance (VA Handbook 6300.7).

## Module Summary

In this module you learned about the requirements:

- For operational management ensuring privacy when releasing information,
- For establishing new systems of records under the Privacy Act, and
- Governing the conduct of VA computer matching programs.

## Module Seven: Freedom of Information Act (FOIA)

In this module you will learn about the elements of the Freedom of Information Act (FOIA). Specifically, you will learn about:

- Access and fees,
- Time limits,
- Exemptions, and
- The Annual Report of Compliance.

At the end of this module, you will be able to identify the elements of the Freedom of Information Act (FOIA).

## Elements

- Access and Fees
- Time Limits for a FOIA Request
- Exemptions Annual Report of
- Compliance

## Access and Fees

The FOIA requires disclosure of VA records, or any reasonably portion of a record that may be segregated, to any person upon written request. VHA administrative records will be made available to the greatest extent possible in keeping with the spirit and intent of the FOIA.

Before releasing records in response to a FOIA request, the record will be reviewed to determine if all or only parts of it cannot be released.

Records or information customarily furnished to the public in the regular course of the performance of official duties may be furnished without a written request. A request for access to official records under the FOIA must be in writing over the signature of the requester and reasonably describe the records so that they may be located.

There are four categories of FOIA requesters. Specific levels of fees will be charged for each of these categories.

- Commercial use requesters,
- Educational and non-commercial scientific institutions requesters,
- Requesters who are representatives of news media, and
- All other requesters.

#### Time Limits for a FOIA Request

A request for records received at a health care facility will be promptly referred for action to the facility's FOIA Officer. The requester must be notified in writing within 20 workdays after receipt of the request whether the request will be granted or denied.

#### Exemptions from Public Access to VHA Records

There are nine exemptions that permit withholding of certain information from disclosure. It is the general policy of VA to disclose information from Department records to the maximum extent permitted by law. There are circumstances, however, when a record should not or cannot be disclosed in response to a FOIA request. When such an occasion arises, the FOIA permits records or information, or portions that may be segregated to be withheld under one or more of the exemptions. Determinations as to whether a FOIA exemption is applicable to a certain records are made solely by the facility FOIA Officer.

#### Annual Report of Compliance

The FOIA requires each agency to submit to Congress a report on or before March 1st of each year of its activities and efforts to administer the FOIA during the preceding fiscal year. The facility FOIA Officer is required to submit figures referencing FOIA requests annually to VHA CO (See VHA Directive 2005-42, Annual FOIA Report).

#### Module Summary

In this module you learned about

- The elements of the Freedom of Information Act (FOIA).

## Course Completion

Congratulations you have completed taking the text version of the VHA Privacy Policy Training. Please report your completion of this training to your supervisor, your facility education office or to your local privacy officer.

# Certificate of Completion

This certifies that \_\_\_\_\_

Has successfully completed  
VHA Privacy Policy Training  
2009

On \_\_\_\_\_ 2009