SECRETARY OF THE ARMY
WASHINGTON

26 OCT 2020

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2020-13 (Disclosure of Protected Health Information to Unit Command Officials)

1. References. See enclosure 1.

2. Purpose. Pursuant to Department of Defense Manual (DoDM) 6025.18, this directive clarifies the circumstances and prescribes the procedures under which a Soldier's protected health information (PHI) may be disclosed to the Soldier's unit command officials.

3. Background. Military and civilian medical treatment facilities may use and disclose PHI without a Soldier's authorization for activities deemed necessary by the Soldier's commander, or a unit command official designated by the commander, to ensure the proper execution of the military mission. This "military command exception" does not apply to the Family members of military personnel, retirees and their Families, Civilian employees, or other government officials. Use and disclosure of nonmilitary personnel PHI must be pursuant to Title 45, Code of Federal Regulations (CFR), Part 164; DoDM 6025.18; and Army Regulation (AR) 40–66 (Medical Record Administration and Healthcare Documentation).

4. Policy. The Army supports the chain of command's need to access Soldier health information to ensure proper mission execution to the maximum extent possible consistent with law and regulations. The Surgeon General will coordinate with the Defense Health Agency to ensure that timely and accurate information is provided to support decision making for Soldier medical readiness, fitness for duty, or effects on safety or the mission, pursuant to the disclosure authorizations set forth in enclosure 2 and the procedures for requesting and receiving PHI described in enclosure 3.

a. Authorized recipients of PHI. Any commander who exercises authority over a Soldier may receive PHI that is necessary to ensure proper execution of the mission. At the Department of the Army level, the Chief of Staff of the Army, Vice Chief of Staff of the Army, and Director of the Army Staff are authorized to request and receive PHI when necessary to ensure the proper execution of the military mission.

b. Command authorities are not authorized unfettered access to a Soldier's PHI, nor are they given direct access to a Soldier's medical records. Federal regulations (45 CFR 164) and DoD policy (DoDM 6025.18 and DoD Instructions 6490.04 and 6490.08) require medical treatment facilities to take reasonable steps to limit the use or

disclosure of PHI to the minimum necessary to accomplish the authorized purpose. The "minimum necessary" rule applies to all uses and disclosures of PHI except as noted in DoDM 6025.18, paragraph 4.5.b(2).

c. In the event of a disagreement between a commander and the staff of an Army-managed medical treatment facility, the commander of the facility (or designee) will, before making a determination, seek the advice of the facility's servicing legal advisor, Health Insurance Portability and Accountability Act (HIPAA) privacy officer, or both, as appropriate.

d. Pursuant to Army Directives 2016-07 and 2018-11, the Medical Readiness Commander Portal in the Medical Operational Data System enables commanders to monitor medical readiness by accessing their Soldiers' physical profiles and individual medical readiness information. Commanders may designate other unit command officials to have access as support staff to monitor the duty limitations and individual medical readiness for their Soldiers (see enclosure 3).

e. The Privacy Act of 1974, as implemented by AR 40–66, requires commanders and all personnel in possession of PHI to protect and safeguard it as they would any other personally identifiable information. Unless otherwise authorized under AR 40–66, further disclosures of PHI may be made only to DoD employees who need the information for the performance of official duties.

5. Responsibilities. Leaders at all levels bear responsibility for promoting and safeguarding the overall health and welfare of their Soldiers. Engaged leadership builds trust and can enhance Soldiers' willingness to make leaders aware of issues that affect their physical and mental well-being. By remaining engaged with Soldiers on their health, leaders foster a climate of cohesion and improve readiness.

a. The Surgeon General will coordinate with the Defense Health Agency to ensure that unit commanders receive information about the medical treatment facility points of contact authorized to disclose PHI on their installations. Pursuant to AR 40–66, unit surgeon and behavioral health assets, where assigned, available, and appropriate, will facilitate the communication process.

b. Unit commanders will—

(1) Designate individuals by name (such as executive officers, command sergeants major, first sergeants, platoon leaders, and platoon sergeants), in writing, who are authorized to receive PHI from the medical treatment facility for Soldiers under their authority. Commanders should strongly consider authorizing leaders down to the

platoon level to request and receive PHI for Soldiers under their authority using the procedures described in enclosure 2.

(2) Establish appropriate administrative, technical, and physical safeguards to protect PHI in the possession of unit command officials pursuant to Army Directive 2016-07.

6. Applicability. The provisions of this directive apply to the Regular Army, Army National Guard/Army National Guard of the United States, and U.S. Army Reserve.

7. Proponent. The Surgeon General is the proponent for this policy and will incorporate its provisions into AR 40–66 within 2 years of the date of this directive.

8. Duration. This directive is rescinded on publication of the revised regulation.

Ryan D. McCarthy

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## REFERENCES

a. Privacy Act of 1974; Title 5, United States Code, section 552a

b. The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 110 Stat 2033–2034

c. National Defense Authorization Act for Fiscal Year 2017, Public Law 114-328, 130 Stat. 2193–2245

d. Title 45, Code of Federal Regulations, Part 164 (Security and Privacy)

e. Department of Defense (DoD) Manual 6025.18 (Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs), 13 March 2019

f. DoD Instruction 6490.04 (Mental Health Evaluations of Members of the Military Services), 4 March 2013

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

h. Army Directive 2016-07 (Redesign of Personnel Readiness and Medical Deployability), 1 March 2016

i. Army Directive 2018-11 (Update to Redesign of Personnel Readiness and Medical Deployability), 10 September 2018

j. Army Regulation 25–22 (The Army Privacy Program), 22 December 2016

k. Army Regulation 40–66 (Medical Record Administration and Healthcare Documentation), 17 June 2008, including Rapid Action Revision issued 4 January 2010

**DISCLOSURE AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION TO UNIT COMMAND OFFICIALS**

1. General purposes. The minimum necessary protected health information (PHI) may be disclosed to unit command officials exercising authority over the Soldier, without the Soldier's authorization, for these purposes:

a. to determine the Soldier's fitness for duty

b. to determine the Soldier'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

c. to carry out any other activity necessary to ensure the proper execution of the mission of the Armed Forces

2. Disclosures authorized or required by regulation. These regulatory and command management programs do not require a Soldier's authorization to disclose PHI. Medical information under these programs will be disclosed pursuant to their governing policy for these purposes:

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

b. to report results of physical examinations and physical profiles pursuant to AR 40–501 (Standards of Medical Fitness)

c. to screen and provide periodic updates for individuals in personnel reliability and special programs, such as those described in AR 190–17 (Biological Select Agents and Toxins Security Program), AR 50–5 (Nuclear Surety), AR 50–6 (Chemical Surety), and AR 380–67 (Personnel Security Program)

d. to review and report pursuant to AR 600–9 (The Army Body Composition Program)

e. to assist investigating officers pursuant to AR 600–8–4 (Line of Duty Policy, Procedures, and Investigations)

f. to conduct medical evaluation boards and administer physical evaluation board findings pursuant to AR 635–40 (Disability Evaluation for Retention, Retirement, or Separation)

g. to review and report in accordance with AR 600–110 (Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus)

h. to carry out activities under the authority of DoD Directive 6490.02E (Comprehensive Health Surveillance) and AR 40–5 (Army Public Health Program) to safeguard the health of the military community

i. to report on casualties in any military operation or activity pursuant to AR 638–8 (Army Casualty Program) or local installation procedures

j. to medically administer flying restrictions pursuant to AR 40–8 (Temporary Flying Restrictions Due to Exogenous Factors Affecting Aircrew Efficiency) and AR 40–501

k. to participate in aircraft accident investigations pursuant to AR 4–21 (Medical Aspects of Army Aircraft Accident Investigation)

l. to respond to queries from accident investigation officers to complete accident reporting under the Army Safety Program pursuant to AR 385–10 (The Army Safety Program)

m. to report mental status evaluations pursuant to DoD Instruction 6490.04 (Mental Health Evaluations of Members of the Military Services) and U.S. Army Medical Command Regulation 40-38 (Command-Directed Mental Health Evaluations)

n. to report special interest patients pursuant to AR 40–400

o. to report the Soldier's dental classification pursuant to AR 40–3 (Medical, Dental, and Veterinary Care)

p. to assist in serious incident reporting pursuant to AR 190–45 (Law Enforcement Reporting)

q. to carry out the Soldier Readiness Program and mobilization processing requirements pursuant to AR 600–8–101 (Personnel Readiness Processing) and any applicable combatant command guidance

r. to provide initial and follow-up reports pursuant to AR 608–18 (The Army Family Advocacy Program)

s. to determine eligibility for assignment or attachment to a Warrior Transition Unit pursuant to AR 40–58 (Army Recovery Care Program)

t. to provide medical records to investigating officers or boards of officers pursuant to AR 15–6 (Procedures for Administrative Investigations and Boards of Officers)

u. to comply with other regulations carrying out any other activity necessary for the proper execution of the Army mission.

3. Disclosures related to behavioral health. Pursuant to DoD Instruction 6490.08 (Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members), healthcare providers will follow a presumption that they are not to notify a Soldier's commander when the Soldier obtains behavioral health (BH) care unless one of the following criteria are met or the Soldier consents. When one or more of these criteria are met, healthcare providers will proactively notify the commander or commander's designee and provide the minimum necessary information to satisfy the purpose of the disclosure.

a. Harm to self and/or harm to others. The provider believes the Soldier is at serious risk of self-harm or harm to others as a result of the condition itself or medical treatment of the condition. This includes any disclosures concerning child abuse or domestic violence consistent with DoD Instruction 6400.06 (Domestic Abuse Involving DoD Military and Certain Affiliated Personnel).

b. Harm to mission. The provider believes the Soldier is at serious risk to harm a specific military operational mission. Such serious risk may include conditions that significantly affect impulsivity, insight, reliability, and judgment, and may include deployment-limiting BH conditions and medications.

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

d. Inpatient care. The Soldier is admitted or discharged from any inpatient BH or substance abuse treatment facility.

e. Acute medical conditions interfering with duty. The Soldier is experiencing an acute mental health condition or an acute medical treatment regimen that impairs the Soldier's ability to perform assigned duties (For example, the Soldier is on medication that could impair duty performance.) This may include deployment-limiting BH conditions and medications.

f. Substance abuse treatment program. The Soldier has entered into or is being discharged from a formal outpatient or inpatient treatment program pursuant to AR 600–85 (The Army Substance Abuse Program).

g. Command-directed behavioral health evaluation. The BH services are obtained as a result of a command-directed BH evaluation consistent with DoD Manual 6025.18.

h. Other special circumstances. The notification is based on other special circumstances, where 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 military medical treatment facility) at the O-6 or equivalent level or above, or by a commanding officer at the O-6 level or above.

## PROCEDURES FOR REQUESTING AND RECEIVING PROTECTED HEALTH INFORMATION

1. Designation of authorized unit command officials:

a. Commanders will provide a copy of their assumption of command orders to the military medical treatment facility (MTF). Written designation of additional unit command officials to whom protected health information (PHI) may be disclosed will be provided to the MTF as appropriate.

b. Commanders will designate, in writing, the unit command officials to whom the PHI of Soldiers under their authority may be disclosed. Although the number of unit command officials who can be designated is not limited, commanders should make the designation based on a determination of each official's need to know. At a minimum, the following information must be included in the written request:

(1) grade and name of designated individual

(2) duty position

(3) official phone and email contact information

(4) any limitations the commander places on the individual's authority, such as—

(a) duration (for example, "This designation expires on 31 December 2019.")

(b) category of Soldiers for whom PHI may be disclosed (for example, "all Soldiers assigned to 1st Platoon, C Company")

(c) categories of PHI that can be disclosed to the designee (for example, "PHI on Soldier's physical profile and individual medical readiness information")

c. Commanders are encouraged to designate a unit command official to obtain access to the Medical Readiness Portal–Commander Portal as the "commander designee." The commander designee is authorized to make deployability determinations on behalf of the commander. Additionally, commanders may designate an unlimited number of personnel in the "Unit Command Support Staff" role to access the Medical Readiness Commander Portal in the Medical Operational Data System (MODS) to ensure mission readiness.

(1) Unit commanders and their designated command staff must have an active common access card to access the Commander Portal. All users must complete the Personnel Readiness Transformation Training (course number DHA-US062) on Joint Knowledge Online (available at https://jkodirect.jten.mil/) before they can access the

system. The course completion date transfers to the MODS User Management application in 1–3 days. Command Portal Access Managers (CPAMs) can then view and approve user access.

(2) Unit commanders and their designated command staff must register for access to the Commander Portal at www.mods.army.mil. Users will select the Medical Readiness Portal application to load their home page. They can select “settings” to load user management and “help” to access the Commander’s Portal Access Guide for step-by-step instructions (or find the guide from the help menu). After registration, the CPAM can approve the user application.

(3) Documentation verifying the user’s role (assumption of command orders for commanders or commander’s designation memorandum for other users) will be provided to the CPAM.

2. Communication between the MTF and authorized unit command officials.

a. The Office of the Surgeon General will coordinate with the Defense Health Agency to ensure that installation unit commanders receive current point of contact (POC) information for each MTF. Authorized unit command officials will contact MTF POCs with questions or concerns about the status of a Soldier.

b. Pursuant to AR 40–66, Army-managed MTF providers or other designated Army-managed staff will proactively inform a commander of a Soldier’s minimum necessary PHI, such as the following:

(1) information to avert a serious and imminent threat to health or safety of a person, such as suicide, homicide, or other violent action

(2) medications or conditions that could impair the Soldier’s duty performance

(3) injuries that indicate a safety problem or battlefield trend

(4) information about risks for heat or cold injury

(5) requirement for hospitalization (If the Soldier’s condition is deemed not urgent, the commander will be notified no later than 24 hours after admission.)

(6) diagnosis of serious or very serious illness

c. The following modes of communication between Army-managed MTF staff and authorized unit command officials are available:

(1) The Medical Readiness Portal–Commander Portal is the primary mechanism for communicating PHI on duty limitations and individual medical readiness. The

Commander Portal synthesizes and displays the data from the Medical Protection System and other MODS applications into actionable information for the command.

(2) The e-Profile is the Army profiling system of record and will be used to communicate all temporary and permanent duty limitations. Commanders and providers can use the secure messaging feature in the Commander Portal to communicate profile clarifications or concerns.

(3) Army-managed MTF personnel will use DD Form 689 to inform commanders about the status of a Soldier after sick call. This form is used for a condition limited to acute, minor, or self-limited illnesses. Soldiers are required to deliver the DD Form 689 to unit command officials. Army-managed providers will include, in block 12 of the form, their contact information or an alternate POC at the MTF where commanders may direct questions about the Soldier's status.

(4) Army-managed BH providers will use DA Form 3822 (Report of Mental Status Evaluation) to report the findings of a mental status evaluation of a Soldier for command-directed BH evaluations conducted pursuant to DoD Manual 6025.18 or other regulations. Army-managed BH providers will transmit the completed DA Form 3822 to the unit commander via encrypted email and will include the BH provider's contact information for commanders to address any concerns about the Soldier's status.

(5) Army-managed providers will use official memorandums to communicate the results of a commander's request for a fitness-for-duty evaluation of a Soldier. Army-managed providers will transmit the memorandums to the unit commander via encrypted email and will include the provider's contact information or an alternate POC at the MTF for commanders to address any concerns about the Soldier's status.

(6) The Army-managed MTF will provide weekly rosters to unit command officials of appointment no-shows, including the name, unit, date, and time of the missed appointment. The reason for medical appointments or clinical service, however, cannot be disclosed. The no-show rosters will be transmitted to unit command officials via encrypted email.

(7) All other requests for Soldier PHI will be submitted using DA Form 4254 (Request for Private Medical Information) and must include the requestor's ink or digital signature. Requests submitted electronically will be sent via encrypted email. Requests by an individual other than a commander must include a copy of the commander's authorization or other appropriate documentation verifying the requestor's authority to receive PHI.