

## PRIVACY AND HIPAA FOCUSED TRAINING

### Welcome and Introduction

Welcome to the **Privacy and HIPAA Focused Training** website. This site will allow you to take the mandatory training course detailing the **Understanding HIPAA Privacy** training. This course is designed to be finished in 50-60 minutes.

#### Audience

All staff with direct access to protected health information (PHI) or access to PHI through VA computer systems are required to complete this training annually on the anniversary date of which they took the training the previous year.

All new employees with direct access to PHI or access to PHI through VA computer systems are required to take this training within 30 days of hire or prior to the employee being allowed access to PHI in any format.

A team of subject matter experts from the VHA Privacy Office created this training.

If you need help while going through the training, contact the VA Talent Management System (TMS) Help Desk at [vatmshelp@va.gov](mailto:vatmshelp@va.gov) or Monday through Friday between 08:00A - 10:00P at 1-866-496-0463.



## Goals

The goal of this training is to provide knowledge of:

### **Module 1**

Basic Privacy Statutes and Employee Responsibilities

### **Module 2**

Veterans Rights

### **Module 3**

Introduction to Uses and Disclosures of Information

### **Module 4**

Authorization Requirements and Privacy of photographs, digital images and video and audio recordings

### **Module 5**

Special Privacy Topics

### **Module 6**

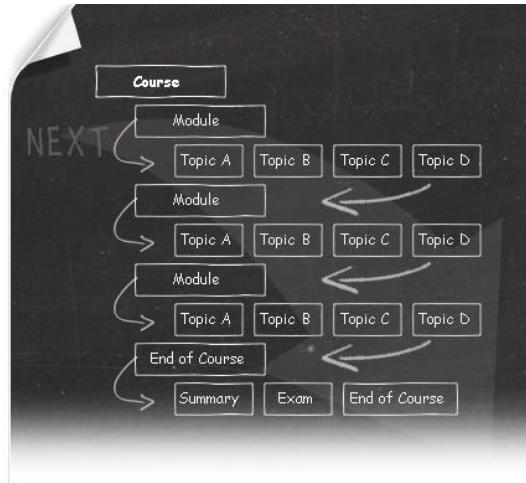
Freedom of Information Act (FOIA)



## Course Structure

This course is divided into *modules*. Modules are divided into smaller sections called *topics*. Additional Privacy policy-related content is provided using the following methods:

- When going through the training, select the **[NEXT]** button once and wait for the page to load. Selecting the **[NEXT]** button multiple times may cause the pages to load incorrectly
- Your knowledge of the training content will be checked periodically. You must answer each Knowledge Check question correctly in order to proceed with the training.



**NOTE:** It is **imperative** to read instructions and the question text thoroughly.

The complete Privacy and HIPAA Training is accessible from all screens by selecting the resource link available on the navigation bar of each page.

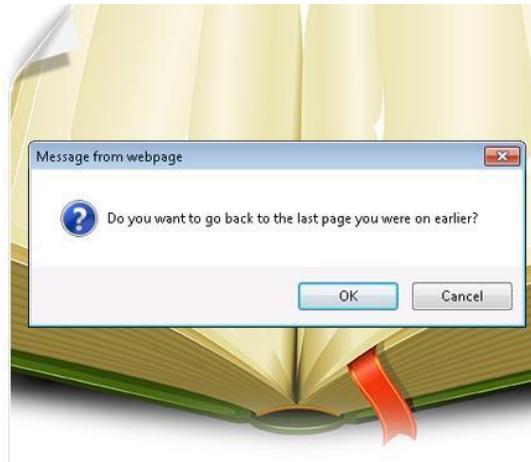
## Bookmarking

You may exit the training at any time by clicking the [EXIT] button at the top-right of the screen.

If you leave this training before you have completed all the lessons, your progress is saved. When you log back in and go to the Online Content Course screen, click the yellow [LAUNCH AGAIN] button to return to the training.

Then, a message box will appear asking "Do you want to go back to the last page you were on earlier?" Click the [OK] button to resume where you left off.

Alternatively, you may select the [MENU] button and jump to the beginning of each module. Notice that your progress is recorded by a checkmark next to each module title.



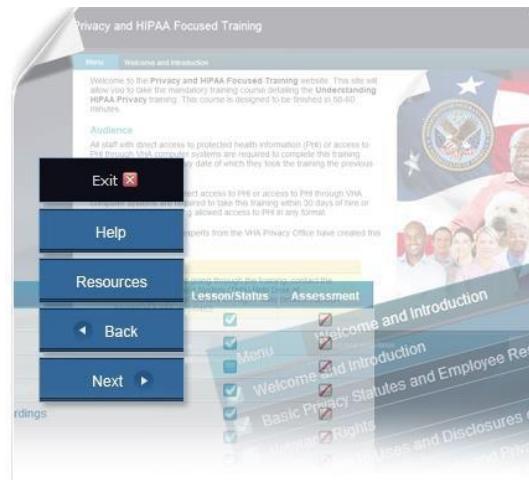
## Navigation

The training is navigated using the **[NEXT]** or **[BACK]** buttons.

Please take the training in sequential order.

The following buttons are accessible throughout the training:

<b>BACK</b>	[ALT+4] – Return to the previous content
<b>NEXT</b>	[ALT+5] – Proceed to the next content screen
<b>EXIT</b>	[ALT+0] – Log out of the training
<b>RESOURCES</b>	[ALT+3] – Open a list of resources and terms
<b>HELP</b>	[ALT+2] – Open Help content



## Module 1 – Basic Privacy Statutes and Employee Responsibilities

### Lesson Objectives

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

- Six statutes that govern the collection, maintenance and release of information from Veterans Health Administration (VHA) records,
- Employee responsibility in the use and disclosure of information, and
- Functional Categories and Minimum Necessary Standard



## Basic Privacy Statutes

VHA health care facilities should comply with all statutes simultaneously 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 Privacy Act (PA), 5 U.S.C. 552A** – "The Privacy Act of 1974 (PA)," makes records of the Department of Veterans Affairs (VA) that are records about a living individual who is a United States citizen or an alien lawfully admitted to US residence confidential.
- **Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulation the HIPAA Privacy Rule** – The HIPAA Privacy Rule provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of personal health information needed for patient care and other important purposes.
- **Health Information Technology for Economic and Clinical Health (HITECH) Act** – The Health Information Technology for Economic and Clinical Health (HITECH) Act addresses the privacy and security concerns associated with the electronic transmission of health information.
- **38 U.S.C. § 5701 Confidentiality Nature of Claims** – 38 U.S.C. Section 5701 makes VA benefits records and the names and home addresses of present and former armed forces personnel and their dependents confidential.
- **38 U.S.C. § 5705 Confidentiality of Healthcare Quality Assurance Review Records** – 38 U.S.C. 5705 Confidentiality of Healthcare Quality Assurance Review Records makes information and records generated by VA's medical quality assurance program confidential and privileged and exempt from disclosure under the FOIA.
- **38 U.S.C. § 5701 Confidentiality of Certain Medical Records** – 38 U.S.C. Section 7332 makes strictly confidential all VA records that contain the identity, diagnosis, prognosis or treatment of VA patients or subjects for drug abuse, alcoholism or alcohol abuse, infection with human immunodeficiency virus (HIV/AIDS), or Sickle Cell Anemia.
- **The Freedom of Information Act (FOIA), 5 U.S.C. 552** – The FOIA requires Federal departments and agencies, such as VA, to release their records unless FOIA specifically exempts the information or record from disclosure.

## Employee Responsibility in the Use and Disclosure of Information

Employees can use health information contained in VHA records in the official performance of their duties for treatment, payment, or health care operations purposes. However, employees must only access or use the minimum amount of information necessary to fulfill or complete their official duties. The ability to access PHI **does not** constitute authority to use PHI without a need to know.

Since April 14, 2003 with the implementation of the HIPAA Privacy Rule, supervisors can no longer access their employee Veterans' health records under a "need to know." Employee's access to PHI is limited to treatment, payment or health care operations (TPO). There is no authority under the HIPAA Privacy Rule to access an employee's health record without their authorization for employment purposes.

There is **NO** authority for an employee to access another employee's or a Veteran's health record unless it is in performance of their official duties and it is for treatment, payment or health care operations. Appropriate disciplinary action may be taken by the supervisor with guidance from Human Resources.



## Functional Categories and Minimum Necessary Standard

VHA Handbook 1605.02 "Minimum Necessary Standard for Protected Health Information" discusses the requirement for assignment of functional categories. The handbook states that VHA must identify the persons, or classes of persons, who need access to protected health information to carry out their duties, the categories of protected health information to which access is needed, and any conditions under which they need the information to do their jobs.

VHA personnel must be assigned a functional category by their supervisor upon initial hire, position change, and annually thereafter to review the applicability of access to protected health information to their official job duties.

VA form 10-0539, "Assignment of Functional Categories" is found in *VHA Handbook 1605.02 Appendix E* and can be used to assign functional categories. Employees must sign and date the form annually. The form is not required to be used but if it is not used a documented process must be in place to ensure compliance.

Refer to your local facility Privacy Officer for additional guidance.

Assignment of Veterans Affairs		Assignment of Functional Categories	
's Name:	Job Title:		
Department/Service Assigned:			
If employee falls into more than one functional category listed below, access should be granted based on the less restrictive category to meet the need of an intended purpose.			
This table shows access or non access to PHI in regards to functional category, it does not show if a user needs access to their own System of Records in order to complete their job functions.			
Immediate Supervisor: Check off functional category, review with employee, obtain signatures, and maintain copy in the Supervisor's Personnel Files (RCS 10-1, 05-3) for the individual employee.			
<input type="checkbox"/> Access or use of Protected Health Information (PHI) not required (EMS, Veterans Canteen Service, Mailroom Employee, etc.)			
Functional Categories (Class of Persons)	Type of Protected Health Information Accessible	Allowable Systems of Records for Limited Access	Conditions for Access to Information
Direct Care Providers	Entire Medical Record		Treatment of Individuals
Department of Veterans Affairs (VA) Researchers	Entire Medical Record including research records		Activities as approved by an Institutional Review Board or Privacy Board; preparatory to research
Indirect Care Providers	Entire Medical Record		In support of treatment of individuals
Business Office Administrative	Entire Medical Record		In support of payment of individuals care
Health Information Support Services	Entire Medical Record		Assign diagnostic codes to transcribe, file, release information, and provide or input registry data

## Module 2 - Veterans Rights

## Lesson Objectives

In this module you will learn about the rights granted to Veterans by the Privacy Act and the HIPAA Privacy Rule. When the Privacy Act and the HIPAA Privacy Rule are in conflict, the regulation that grants the Veteran the most rights is used.

Specifically, you will learn about the Veterans right to:

- A Notice of Privacy Practices (NoPP),
- A copy of their own Protected Health Information,
- Request an amendment to health records,
- Accounting of Disclosures,
- Confidential Communications,
- Request restriction of use or disclosure of records, and
- File a complaint



These rights extend to the personal representative of a deceased individual (e.g. Executor of the Estate, Next of Kin).

**IMPORTANT:** Employees must protect PHI about a deceased individual in the same manner and to the same extent as that of living individuals for as long as the records are maintained.

## Notice of Privacy Practices (NoPP)

A Veteran or Non-Veteran receiving treatment has the right to receive a copy of the "Notice of Privacy Practices" (NoPP).

All newly registered Veterans are mailed a Notice of Privacy Practices by the Health Eligibility Center (HEC). The VHA Privacy Office is responsible for updating the NoPP and ensuring Veterans are provided the NoPP every three years or when there is a significant change.

This notice includes the uses and disclosures of his/her protected health information by VHA, as well as, the Veteran's rights and VHA's legal responsibilities with respect to protected health information. There is one NoPP for all of VHA.

A copy of the NoPP can be obtained from the Privacy Officer.



## Right of Access

A Veteran has a right to obtain a copy of his or her own health record. A Veteran must submit a **signed written request** to the VHA health care facility where the record is maintained.

VHA employees should refer all requests from Veterans for copies of their records to the Release of Information (ROI) Office or to another appropriate office that has a mechanism in place to track those disclosures. Clinical providers may disclose patient information at Point of Care, without a written request, if it is for patient education purposes. Veterans requesting copies of their health records must provide sufficient information to verify their identity, e.g., driver's license or other picture identification, to ensure appropriate disclosure.



## Right to Request an Amendment

The Veteran has the right to request an amendment to any information in their health record. The request must be in writing and adequately describe 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 VHA health care facility that maintains the record. Requests for amendments to health records should be directed to the local Privacy Officer. Authors of the requested amendments should work with their Privacy Officers so that a timely response is given.



## Right to an Accounting of Disclosures

A Veteran may request a list of all written disclosures of information, from his/her records. VHA facilities and program offices are required to keep an accurate accounting for each disclosure made to a party external to VHA. An accounting **is not** required to be maintained in certain circumstances, including when the disclosure is to VHA employees who have a need for the information in the performance of their official duties, if the release is to the individual to whom the record pertains or the release is pursuant to a FOIA request.

Entry of a VA patient by name or other identifier into a State Prescription Drug Monitoring database is considered a disclosure that must be accounted for. The employee making the disclosure must do the accounting of disclosures; this can be done through creating a note in CPRS or accounting for the disclosure manually. Contact your VHA facility Chief of HIM and your local Privacy Officer for additional guidance.

When electronic batch reporting is available, it will capture the accounting of disclosure requirements, therefore eliminating the need for a note in CPRS or a manual accounting.

1. FILE RECORD NO. (if applicable)	2. DATE OF DISCLOSURE
3. NATURE OF DISCLOSURE (describe brief description of each type of disclosure made)	
4. PURPOSE OF DISCLOSURE	
5. NAME AND ADDRESS OF PERSON OR AGENCY TO WHOM DISCLOSURE IS MADE	6. AUTHORITY FOR RELEASE OF INFORMATION (the authority or authority under whom the disclosure was made)
7. NAME AND TITLE OF VA EMPLOYEE MAKING THE DISCLOSURE	

VA FORM 5572  
JUN 2004  
Added Form Designer

## Right to 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,
- Health records, and
- All other

Requests to send documents or correspondence to multiple addresses will be considered unreasonable and therefore denied (all or none to one address). Requests for confidential communications, in person or in writing, shall be referred to the appropriate office, such as eligibility or enrollment, for processing. All requests for confidential communication via e-mail will be denied.



## Right to Request a Restriction

The Veteran has the right to request VHA to restrict its use or disclosure of PHI to carry out treatment, payment, or health care operations. The Veteran also has the right to request VHA to restrict the disclosure of PHI to the next of kin, family, or significant others involved in the individual's care. This request must be in writing and signed by the Veteran. Documenting in the CPRS health record does not constitute a valid restriction request.

VHA **is not required** to agree to such restrictions, but if it does, VHA must adhere to the restrictions to which it has agreed. A request for restriction should be delivered to the Privacy Officer or designee for processing.



## Right to Opt-Out of Facility Directory

A Veteran has the right to opt-out of the facility directory. The facility directory is used to provide information on the location and general status of a Veteran. Veterans must be in an inpatient setting in order to opt-out and thus it does not apply to the emergency room or other outpatient settings. If the Veteran opts out of the facility directory no information will be given unless required by law. The Veteran will not receive mail or flowers. If the Veteran has opted out of the directory visitors will only be directed to the Veteran's room if they already know the room number.

If the Veteran is admitted emergently and medically cannot give their opt-out preference, the provider will use their professional judgment and make the determination for the Veteran. This determination may be based on previous admissions, or by a family member who is involved in the care of the Veteran. When the Veteran becomes able to make a decision, staff is required to ask the individual their preference about opting out of the facility directory.



## Right to File a Complaint

Patients have a right to file a complaint if they believe that VHA has violated their (or someone else's) health information privacy rights or committed another violation of the Privacy or Security Rule.

A complaint can be filed by contacting one or more of the following:

- The VHA health care facility's Privacy Officer, where they are receiving care,
- The VHA Privacy Office, or
- The U.S. Department of Health and Human Services, Office for Civil Rights



## Module 3 – Introduction to Uses and Disclosures of Information

### Lesson Objectives

In this module, you will learn about the use and disclosure purposes for release of PHI within VA that **do not** require a written authorization from the Veteran.

Specifically you will learn about:

- Using or disclosing PHI for treatment, payment and/or health care operations (TPO),
- Disclosure of PHI without an authorization for other than TPO,
- Use of PHI for research purposes,
- Incidental Disclosures, and
- Systems of Records



## Using PHI without an Authorization for Treatment, Payment, or Health Care Operations

VHA employees may use PHI on a need to know basis for their official job duties for purposes of treatment, payment and/or health care operations.

"Treatment" generally means the provision, coordination, or management of health care and related services among health care providers or by a health care provider with a third party, consultation between health care providers regarding a patient, or the referral of a patient from one health care provider to another.

"Payment" encompasses the various activities of health care providers to obtain payment or be reimbursed for their services and of a health plan to obtain premiums, to fulfill their coverage responsibilities and provide benefits under the plan, and to obtain or provide reimbursement for the provision of health care.

"Health care operations" are certain administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment.



## Disclosure of PHI without an authorization for other than treatment, payment, or health care operations

For the purpose of determining a Veteran's eligibility, entitlement, and/or provision of benefits, VHA may disclose Veteran PHI to the following groups:

- Veterans Benefits Administration (VBA)
- National Cemetery Administration (NCA)
- Board of Veterans Appeals (BVA)
- VA contractors (as long as there is a business associate agreement in place)



**Disclosure of PHI without an authorization for other than treatment, payment, or health care operations,  
continued**

There are also a number of situations where VHA may disclose information, without an authorization, for other than treatment, payment, or health care operations.

Examples of some of these include:

- Public Health Activities (e.g., giving information about certain diseases to government agencies)
- When Required by Law
- Research Activities (e.g., giving information to a researcher to prepare a research protocol)
- Abuse Reporting (e.g., giving information about suspected abuse of elders or children to government agencies)
- Law Enforcement
- State Prescription Drug Monitoring Program (SPDMP)



For additional information and guidance contact your Privacy Officer.

### Use of PHI for Research Purposes

A VA researcher may access PHI without the subject's written authorization if the information is reviewed preparatory to research on human subjects. Only aggregate data will be recorded in the researcher's file and no PHI will be removed from VHA during the preparatory phase.

Further use or disclosure of PHI requires IRB approval of the research protocol, informed consent, or waiver of informed consent. In addition, the Principal Investigator (PI) must have an approved HIPAA authorization that is reviewed by the Privacy Officer or a waiver of the HIPAA authorization by the IRB or Privacy Board. If the research involves pictures or voice recordings for other than treatment purposes, an additional VA Form 10-3203 *Consent for Use of Picture and/or Voice* is required.



## Incidental Disclosures

Many customary health care communications and practices play an essential role in ensuring that Veterans receive prompt and effective health care. Due to the nature of these communications and practices, as well as the various environments in which Veterans receive health care or other services from VHA, the potential exists for a Veteran's health information to be disclosed incidentally. For example:

- A hospital visitor may overhear a provider's confidential conversation with another provider or a patient.
- A patient may see limited information on sign-in sheets.
- A Veteran may hear another Veteran's name being called out for an appointment.
- A Veteran may see limited information on bingo boards or white boards.



**NOTE:** Incidental disclosures are permitted as long as reasonable safeguards to protect the privacy of the information are followed.

Many health care facilities providers and professionals have long made it a practice to ensure reasonable safeguards are in place for Veterans PHI. For instance:

- Speaking quietly when discussing a patient's condition with family members in a waiting room or other public area;
- Avoiding using patients' names in public hallways and elevators, and posting signs to remind employees to protect patient confidentiality;
- Only using last four digits of SSN on bingo boards; and
- Reducing the use of the SSN whenever possible.

## System of Records

A System of Records (SOR) is a group of records under the control of the agency from which information about an individual may be retrieved by the name of the individual or by some other unique identifier or symbol.

- An advance public notice known as the System of Records Notice (SORN) must be published prior to an agency collecting information for a new SOR.
- Publication in the Federal Register is required to provide an opportunity for the interested person to comment.
- One SOR that is familiar in VHA is 24VA10P2—Patient Health Records—VA.
- Within the SOR, there is a section describing routine uses (RU), which is a term that is unique to the Privacy Act and means the disclosure of a record outside of VA for a reason compatible with the purpose for which it was collected.
- A "routine use" gives authority to allow for disclosure outside of VA without authorization.
- For additional information on System of Records, contact your administration or VHA health care facility Privacy Officer.



For a list of all VHA systems of records, go to <http://vaww.vhaco.va.gov/privacy/SystemofRecords.htm>.

## Module 4 – Authorization Requirements and Privacy of photographs, digital images and video and audio recordings

## Lesson Objectives

In this module, you will learn the components for a valid authorization and information about the privacy of audio and video recordings.

Specifically, you will learn about:

- Authorization Requirements, and
- Privacy of photographs, digital images and video and audio recordings



## Definition of Authorization

An authorization as defined by the HIPAA Privacy Rule is an individual's written permission for a covered entity to use and disclose protected health information (PHI). A written authorization is a document signed by the individual to whom the information or record pertains and may be required for use or disclosure of protected health information.

	<b>REQUEST FOR OR AUTHORIZATION TO RELEASE MEDICAL RECORDS OR HEALTH INFORMATION</b>
<b>Act and Paperwork Reduction Act Statement</b> The execution of this form does not require the return of information other than that specifically identified below. This form is required by the Health Information Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 42 U.S.C. § 1320d-2, 1320d-5 and 1320d-6) and is specifically required to be used by VA to collect records of treatment and payment information in accordance with the requirements of the Health Information Portability and Accountability Act of 1996. VA may not collect any information other than that specifically identified below in accordance with the requirements of the Health Information Portability and Accountability Act of 1996. VA may not collect any information other than that specifically identified below in accordance with the requirements of the Paperwork Reduction Act of 1995. VA may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB control number. The time limit for this form is one year from the date it was first displayed by VA, individual who must complete this form and average 1 minute. This includes the time it will take to read instructions, gather necessary facts and fill out the form.	
<b>ENTER BELOW THE PATIENT'S NAME AND SOCIAL SECURITY NUMBER IF THE PATIENT DATA CARD IMPRINT IS NOT USED.</b>	
<b>TO DEPARTMENT OF VETERANS AFFAIRS (Print or type name and address of health care facility)</b>	
<b>PATIENT NAME (Last, First, Middle initial)</b>	
<b>SOCIAL SECURITY NUMBER</b>	
<b>NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED</b>	
<b>VERITABLE REQUEST</b> I request and authorize Department of Veterans Affairs to release the information specified below to the organization, or individual named on this request. I understand that the information to be released includes records including the following (checkmark).	
<input type="checkbox"/> DRUG ABUSE <input type="checkbox"/> ALCOHOL OR DRUG ALCOHOL ABUSE <input type="checkbox"/> TESTING FOR OR INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS (HIV) <input type="checkbox"/> MOBILE CYTOLAB	
<b>INFORMATION REQUESTED</b> Check applicable box(es) and state the extent or nature of the information to be disclosed, giving the dates or approximate dates covered by each	
<input type="checkbox"/> COPY OF HOSPITAL SUMMARY <input type="checkbox"/> COPY OF OUTPATIENT TREATMENT NOTES <input type="checkbox"/> OTHER (Specify)	
<b>PURPOSE(S) OR NEED FOR WHICH THE INFORMATION IS TO BE USED BY INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED</b>	
<b>NOTE: ADDITIONAL ITEMS OF INFORMATION DENEDED MAY BE LISTED ON THE BACK OF THIS FORM</b>	
<b>AUTHORIZATION:</b> I certify that this request has been made freely, voluntarily and without coercion and that the information contained above is accurate and complete to the best of my knowledge. I understand that I will receive a copy of this form after I sign it. I waive this authority to writing, at any time except to the extent that such has already been taken to comply with it. Written revocation is effective upon receipt by the	

## Authorization Requirements

If VHA employees receive a request for PHI 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.

When a written authorization of the individual is required for use or disclosure of PHI, the authorization must contain each of the following elements to be valid:

- Be in writing,
- Identify the individual to whom the requested information pertains to,
- Identify the permitted recipient or user,
- Describe the information requested,
- Describe the purpose of the requested use or disclosure,
- Contain the signature of the individual whose records will be used or disclosed,
- Contain an expiration date, satisfaction of a need or an event,
- Include a statement that the patient may revoke the authorization in writing, except to the extent the facility has already acted in reliance on it, and a description of how the individual may revoke the authorization,
- Include a statement that treatment, payment, enrollment, or eligibility for benefits cannot be conditioned on the individual completing an authorization, and
- Include a statement that the information may no longer be protected from re-disclosure.

If any of the authorization requirements listed above have not been satisfied the authorization will be considered invalid.

There are some cases when a written authorization is not required such as when:

- PHI is used for treatment, payment, and/or health care operations (TPO), or
- Other legal authority exists.

**NOTE:** If there are questions from VHA employees on legal authority to make disclosures, the Privacy Officer should be contacted prior to making the disclosure.



## Privacy of photographs, digital images and video and audio recordings

The facility must post obvious signage at each entrance of the facility clearly stating the local policy regarding photography, digital imagery, or video/audio recording guidelines.

VHA will request individuals to respect the privacy of patients and others if they want to take photographs or capture digital images and video/audio recordings on VHA premises.

**NOTE:** Secretly taking pictures or recording conversations is strongly discouraged.



## Module 5 – Special Privacy Topics

### Lesson Objectives

In this module, you will learn about several special privacy topics that have not been discussed in previous modules.

Specifically you will learn about:

- Release of 38 U.S.C. § 7332 Information
- Compensated Work Therapy (CWT)
- Subpoenas
- Logbooks
- Compliance
- Virtual Lifetime Electronic Record (VLER)



### **Release of U.S.C. §7332 Protected Health Information**

38 U.S.C. Section 7332 makes strictly confidential all VA records that contain the identity, diagnosis, prognosis or treatment of VA patients or subjects for drug abuse, alcoholism or alcohol abuse, infection with human immunodeficiency virus (HIV/AIDS), or Sickle Cell Anemia. This statute applies to information whether or not it is recorded in a document or a Department record.

For example, a VHA health care provider's conversation discussing a patient's diagnosis, prognosis, and treatment would be protected by Section 7332.

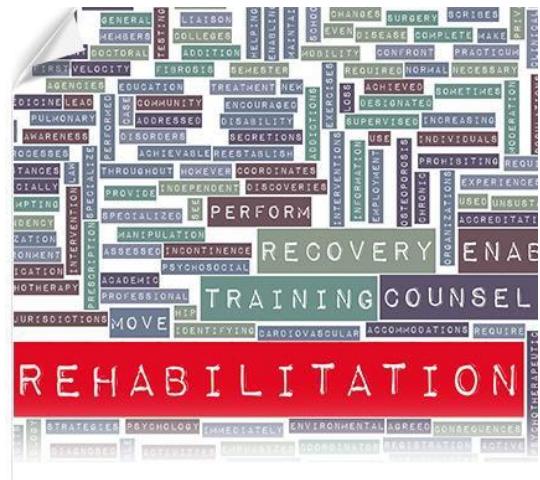
Finally, this statute protects records and information of the testing of individuals for HIV infection and sickle cell anemia, including negative test results.

The following is a list of situations where 38 U.S.C. § 7332 protected information **CAN** be released without a signed authorization:

- To medical personnel to the extent necessary to meet a bona fide medical emergency;
- To qualified personnel for conducting scientific research, management audits, financial audits or program evaluations;
- To public health authority charged under federal or state law for protection of public health pursuant to a standing written request; or
- To a court of competent jurisdiction pursuant to a **very specific** Court Order.

## Compensated Work Therapy (CWT)

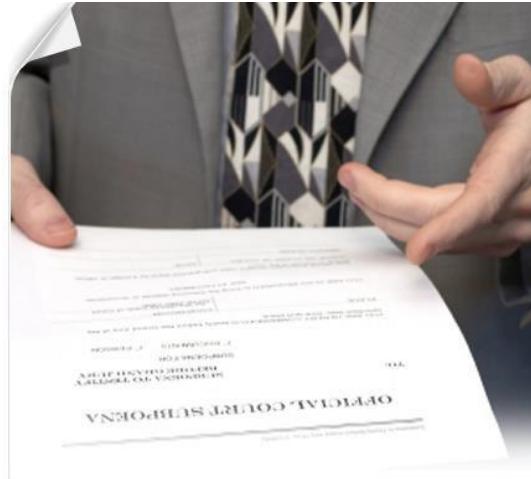
Compensated work therapy (CWT) program members are considered patients — **NOT EMPLOYEES** — therefore they cannot be given access to Veteran PHI which is maintained by VHA. This includes computer systems and verbal or written access to PHI. Appropriate placement for individuals enrolled in the CWT program should be in positions with no access to PHI, which may include such areas as engineering, Acquisitions Material Management (AMM&S), groundskeeper, canteen/limited food service, and mail room mail sorter.



## Subpoenas

A subpoena is a document issued by or under the auspices of a court seeking a release of records or requesting an individual give testimony before a court of law. A subpoena must be signed by a judge for VHA to disclose Privacy Act-protected records.

The facility Privacy Officer and Regional Counsel must be notified in all cases where any personnel receive a court order for the production of records or a subpoena for records.



## Logbooks

A physical logbook is any written (i.e., not electronic) record of activities or events comprised of data which may uniquely identify an individual or contain sensitive personal information that is maintained over a period of time for the purpose of monitoring an activity, tracking information or creating a historical record. The following are examples of physical logbooks:

- Respiratory therapy logs
- Laboratory logs
- Autopsy logs
- Wound care logs
- Logs of cases cleared
- Printouts of Excel spreadsheets
- Access data base printouts



Physical logbooks containing sensitive personal information can only be created, used and maintained for a compelling business need as approved by the VHA facility director or the Program Office Director. A compelling business need is one that requires the capture of sensitive personal information for a policy, regulatory, accreditation or statutory requirement. Compelling business needs may support reasonable and appropriate business operations, patient safety or quality improvement efforts, or other prudent and important health care operations needs such as the board certification of clinical staff including residents and trainees. Transition of physical logbooks to secure electronic logbooks and tracking systems is highly encouraged.

Physical logbooks are vulnerable to loss, theft or misuse of logbook content. Loss of control over a logbook can result in the compromise of sensitive personal information for multiple individuals, which could put individuals at risk for financial, reputational, or other harm and may result in a loss of trust in VHA's ability to secure sensitive personal information.

## Compliance

All employees shall comply with all Federal laws, regulations, VA and VHA policies. Employees shall conduct themselves in accordance with the Rules of Behavior concerning the disclosure or use of information. The VA Rules of Behavior are delineated in VA Handbook 6500, "Information Security Program," Appendix G.

Employees who have access to VHA records or VHA computer systems shall be instructed on an ongoing basis about the requirements of Federal privacy and information laws, regulations, VA and VHA policy. Employees' access or use of PHI is limited to the minimum necessary standard of information needed to perform their official job duties. See VHA Handbook 1605.02, "Minimum Necessary Standards for Protected Health Information" for additional guidance.

The Omnibus final rule imposes a tiered penalty structure and the penalties imposed vary based on the severity of the violation. The penalties range from \$100 to \$50,000 per violation, with a \$1.5 million cap per calendar year for multiple violations of identical provisions, and criminal penalties of up to 10 years' imprisonment.

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.



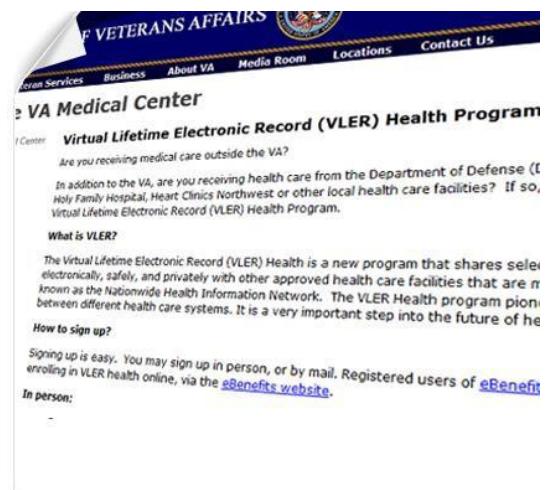
## Virtual Lifetime Electronic Record (VLER)

In April 2009, President Obama directed the VA and DoD to lead the efforts in creating VLER (Virtual Lifetime Electronic Record), which would "ultimately contain administrative and medical information from the day an individual enters military service throughout their military career and after they leave the military."

VLER utilizes the eHealth Exchange to share prescribed patient information via this protected network environment with participating private health care providers, but this does not involve 'scanned' patient information.

VLER benefits Veterans who receive a portion of their care from non-VA health care providers. Below are some of the benefits:

- Eliminates need to hand-carry health records.
- Allows VA and private health care providers to share access of up-to-the-minute health information.
- Veterans may opt-in or opt-out at any time.
- Participating providers will have a 'view only' option to see the Veteran's information once the Veteran has completed an authorization (VA Form 10-0485).



The screenshot shows a web page from the VA Medical Center. The top navigation bar includes links for VA Services, Business, About VA, Media Room, Locations, and Contact Us. The main content area is titled "Virtual Lifetime Electronic Record (VLER) Health Program". It features a sub-section titled "Are you receiving medical care outside the VA?". Below this, there is a section titled "What is VLER?" which provides a brief description of the program. Another section, "How to sign up?", includes instructions for enrolling online via the eBenefits website or in person. The page has a blue and white color scheme consistent with the VA's branding.

## Module 6 – Freedom of Information Act (FOIA)

### Lesson Objectives

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

- Elements of the FOIA
- Agency Records
- Employee Responsibilities
- Who Can Make A FOIA Request



MODULE INTRODUCTION

## Elements of FOIA

The basic purpose of the Freedom of Information Act (FOIA) is "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold governors accountable to the governed." The FOIA establishes a presumption that records in the possession of agencies and departments of the executive branch of the U.S. Government are accessible to the people.

- FOIA is concerned with affording the most disclosure of information under law.
- The FOIA sets standards for determining which records must be disclosed and which records may be withheld.
- The law also provides administrative and judicial remedies for those denied access to records.



## Agency Records

A valid FOIA request must be in writing and may be received by mail, e-mail, by hand or fax. Requests made under the FOIA must reasonably describe the records being requested. If VHA employees receive FOIA requests for any type of agency records they should be forwarded to the VHA healthcare facility's FOIA Officer.

### *Agency Records Are...*

- Either created or obtained by an agency; and
- Under agency control at the time of the FOIA request.

Four factors for determining if an agency has "control" of the records:

- The intent of the record's creator to retain or relinquish control over the record;
- The ability of the agency to use and dispose of the record as it sees fit;
- The extent to which agency personnel have read or relied upon the record; and,
- The degree to which the record was integrated into the agency's records systems or files.



## Employee Responsibilities

The FOIA Officer will make all determinations regarding release of the requested records and employees must fully cooperate with the FOIA Officer in the handling of these requests.

- Specific employee responsibilities include:
  - Searching for agency records at the direction of the FOIA Officer
  - Fully documenting the FOIA search efforts to include time spent searching, search terms utilized, and identification of systems or files searched
  - Providing responsive records to the FOIA Officer in a timely manner
  - Being accessible to the FOIA Officer for questions/clarifications
  - Compiling fee estimates at the direction of the FOIA Officer



Employees should not contact a FOIA requestor. All communications with a FOIA requestor must be made by the FOIA Officer.

You may find the appropriate FOIA Officer using the FOIA Officer Contact roster on the VA FOIA Homepage at <http://www.foia.va.gov/>.

## Who Can Make a FOIA Request?

Virtually **ANYONE**, including:

- Private citizens
- Members of the media
- Members of Congress
- Corporations, associations, partnerships
- Foreign and domestic governments
- Unions
- Other federal employees, except when made in the official performance of their VA duties



### *Exceptions*

The only exceptions to the above items are:

- Federal agencies may not use the FOIA as a means of obtaining information from other federal agencies
- Congressional oversight committees may not be denied information on the basis of a FOIA exemption
- Fugitives from justice, when the requested records relate to the requestor's fugitive status

## Exemptions

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.



## Course Summary

During this course, you have learned about:

- Basic Privacy Statutes and Employee Responsibilities
- Veterans Rights
- Introduction to Uses and Disclosures of Information
- Authorization Requirements and Privacy of photographs, digital images and video and audio recordings
- Special Privacy Topics
- Freedom of Information Act (FOIA)

This concludes the Privacy and HIPAA Focused Training for FY2014.

For more information on Privacy and Release of Information, contact your facility Privacy Officer or Administration Privacy Officer.

For a list of VHA Privacy Officers, go to <http://vaww.vhaco.va.gov/privacy/vhapo.htm>.

Thank you for your participation.



## **Certificate of Completion Privacy and HIPAA Training**

I, \_\_\_\_\_ certify that I completed the Privacy and HIPAA training  
on \_\_\_\_\_.

Signature of Employee/Contractor

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Signature of Supervisor / Date

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