PRIVACY and HIPAA
Veterans Health Administration (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.

Volunteer Responsibilities in the Use and Disclosure of Information
Volunteers can use health information contained in VHA records in the official performance of their duties that support health care operations purposes. However, volunteers must only access or use the minimum amount of information necessary to fulfill or complete their official duties. The ability to access Protected Health Information (PHI) does not constitute authority to use PHI without a need to know. Volunteer's access to PHI is limited to support health care operations. There is NO authority for a volunteer to access another volunteer's or a Veteran's health record unless it is in performance of their official job duties and it is for health care operations. Refer to your local facility Privacy Officer for additional guidance.

Veterans Rights - 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 volunteers 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. 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. 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. Contact your VHA facility Chief of Health Information Management (HIM) and your local Privacy Officer for additional guidance.

**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. A REQUEST FOR RESTRICTION SHOULD BE DELIVERED TO THE Privacy Officer or designee for processing.

Right to Opt Out of 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

Using PHI without an Authorization
VHA volunteers may use PHI on a need to know basis for their official job duties for purposes of supporting health care operations. "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.

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**Deceased Veterans**

**IMPORTANT:** Volunteers 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.

**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 Institutional Review Board approval of the research protocol, informed consent, or waiver of informed consent. In addition, the Principal Investigator (PI) must have an approved HIPAA (Health Insurance Portability and Accountability Act) 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. 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 volunteers to protect patient confidentiality; and reducing the use of the SSN whenever possible.

**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 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.

**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, 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/Video/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.

Release of U.S.C. Section 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.

**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,

**Logbooks (continued)**

tracking information or creating a historical record. The following are examples of physical logbooks:

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

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 volunteers shall comply with all Federal laws, regulations, VA and VHA policies. Volunteers 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 D. Volunteers 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.

**Compliance (continued)**

Volunteers’ 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 volunteers who violate the statutory provisions.

**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.

**Agency Records**

A valid FOIA request must be in writing and may be received by mail, e-mail, by hand or fax. If VHA volunteers 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 files.

**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

**Financial Transactions**
Volunteers are **NOT** to engage in financial transactions with patients. Prohibited transactions include but are not limited to: borrowing or loaning money to patients, purchasing items for patients, and cashing checks for patients. If a Veteran is in need of a financial transaction, please inform the ward medical support assistant, nurse, or social worker.

**Privacy and Confidentiality Summary**
All volunteers must be responsible for safeguarding Protected Health Information. As a volunteer, you have a responsibility to keep all patient information, learned in the course of your duties, confidential and secure. Do not discuss any PHI with anyone.

Remember that you would want your personal information and health records treated in the same confidential and professional manner. Information concerning patients and their records are considered **CONFIDENTIAL** and sharing of that information is grounds for dismissal and/or dismissal as a volunteer.