

Privacy Fact Sheet

September 2018

Accounting of Disclosures

Overview: VHA Directive 1605.01 provides guidance to the workforce on who may disclose individually-identifiable information from official VHA records when prior written authorization is obtained or disclosure is permitted under other legal authority. An accounting of disclosure is not required for any first party right of access. An accounting is also not required when VHA shares information between VA employees, programs, or offices. This fact sheet is designed to answer frequent questions posed by VHA employees.

Legal Authority to Account for Disclosures - The Privacy Act requires an accounting of all disclosures made outside of VA regardless of the purpose of the disclosure. This fact sheet will focus on the requirements of the Privacy Act as the Privacy Act provides the Veteran more patient rights and is more stringent than the HIPAA Privacy Rule. Below are the elements concerning accounting of disclosure exceptions under each statute.

1. The HIPAA Privacy Rule requires an accounting to be maintained on all disclosures excepts those made:
 - a. For treatment, payment and health care operations;
 - b. Pursuant to an authorization;
 - c. To the individual under right of access;
 - d. For limited data set;
 - e. For national security;
 - f. From the Facility Directory; and
 - g. Prior to the compliance data rule

2. The Privacy Act requires an accounting to be maintained on all disclosures except those made:
 - a. (b)(1) – To an employee to perform their official duties; and
 - b. (b)(2) – Pursuant to a FOIA request

Retention Requirements for Accounting of Disclosures - The HIPAA Privacy Rule requires VHA to account for disclosures of Protected Health Information (24VA10P2, Patient Medical Records-VA) for six (6) years. The Records Control Schedule (RCS 10-1) requires information maintained in 24VA10P2 be kept for 75 years from the last date of activity. For all other system of records, refer to RCS 10-1 for the appropriate retention schedule.

Accounting of Disclosure Summary - An accounting of disclosure summary is a listing of all individual disclosures provided to the individual's written request. When a Veteran requests an accounting of disclosure, this copy of the summary is to be maintained by the Privacy Officer to include

the written request and a copy of the summary provided to the Veteran. The summary of an accounting of disclosures provided to an individual must be retained for 6 years after the date of the disclosure per the HIPAA Privacy Rule, 45 CFR 164.530(j)(2).

Process When an Accounting of Disclosure Summary is Requested:

1. The accounting of disclosures must be made available upon request to the individual to whom the record pertains within 60 calendar days after receipt of such a written request, except for disclosures made for health oversight activities or law enforcement purposes as authorized by 38 CFR 1.576(b)(7) and 45 CFR 164.528(a)(2)(i);
2. If the accounting cannot be provided within the specified timeframe, the facility or program can extend the timeframe no longer than 30 days provided that the individual is given a written statement of the reasons for the delay and the date by which the accounting will be provided. Only one such extension of time for action on a request for an accounting is allowed;
3. The individual must be provided information consisting of the date, nature, and purpose of each disclosure, and the name and address (if known) of the person or agency to which the disclosure was made;
4. The Privacy Officer will retain a copy of the accounting of disclosure summary provided to the individual; and
5. The accounting of disclosure summary must be provided to an individual free of charge.

Questions:

Are there any provisions for suspending a request for an accounting of disclosure? Yes, under the HIPAA Privacy Rule in regard to PHI (164.528(a)(2)(i)), the covered entity must temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official for the time specified by such agency or official if such agency or official provides VHA with a statement that such an accounting would be reasonable likely to impede the agency's health care oversight or law enforcement activities. There is also an exception to the accounting of disclosure requirement under the Privacy Act (5 USC 552a(c)(3)), for disclosures made under subsection (b)(7) to law enforcement for specific criminal activity.

Note: Please reference VHA Directive 1605.01, Privacy and Release of Information for information on disclosures made for law enforcement that will not be made available in the accounting of disclosures except as approved by 38 CFR 1.576(b)(7) and 45 CFR 164.528(a)(2)(i).

Is an accounting of disclosures necessary when releasing de-identified data or a limited data set? No. In accordance with the Privacy Act and the HIPAA Privacy Rule, the release of de-identified or limited data sets does not require an accounting of disclosures.

Is an accounting of disclosure required for all oral disclosures? Yes, in certain circumstances. However, VHA has made the decision not to account for oral disclosures at this time but it is a good practice to document in the health record when an oral disclosure is made.

What should the accounting include? If you are using a manual spreadsheet, the following elements must be include: the date of each disclosure, nature or description of the individually-identifiable information disclosed the purpose of each disclosure, and the name and address (if known) of the person or agency to which the disclosure was made. If you are using the ROI Plus software, the elements are already included.

Is the ROI Plus software the only place where an accounting can be maintained? No. The accounting of disclosure record may be maintained via the automated ROI Plus Software, use of an Excel spreadsheet, or manually on VA Form 5572, Accounting of Records/Information Disclosure. The Privacy Officer must be aware of and coordinate with every location within their facility whereby a disclosure may be made outside of the Release of Information Office.

Disclosures may also be tracked where the records are both stored and disclosed from the same source allowing an accounting to be retrospectively created using reports. For example, the VistA billing package maintains all the bills or claims for a patient prepared and submitted to an insurance carrier under the Revenue program. By generating a report of all of the bills/claims for a patient to include date and insurance carrier you have an accounting of disclosures for the billing information.

Note: VA Medical Centers must use the ROI Plus software to account for disclosures of health information within the Release of Information Office per VHA Directive 2011-01, Mandated Utilization of the ROI Plus Software. This software may be de-centralized to other locations.

Is the Sensitive Access Log (Sensitive Patient Access Report or SPAR) an accounting of disclosure? No. The DG Sensitive Access Log is covered under the VistA-VA (79VA10A7) Privacy Act system of records; however, an individual **does** have a right of access to the log maintained by his/her name upon a written request. The DG Sensitive Access log is not considered an accounting of disclosure but an accounting of disclosure is required when the log is provided to anyone outside VA.

Examples of when an accounting of disclosure IS required:

- Disclosures of health information for non-VA purchased care (Fee Basis) such as to a non-VA health care provider, resident care home, assisted living facility or home health agency for treatment purposes;
- Report to a public health department regarding a communicable disease;
- Disclosure to drug company (sponsor) in conjunction with a VA research study; and
- Disclosure of health information to a non-VA medical center when Veteran is being transferred for treatment.
- Basically when a disclosure is made out of VHA, unless notated below there must be an accounting of disclosure.

Examples of when an accounting of disclosure is NOT required:

- To VHA employees in the performance of their official duties;
- When VHA 's uses individually-identifiable health information
- Pursuant to a Freedom of Information Act (FOIA) request;
- To the individual under their right of access request;
- For National Security purposes; and
- Disclosure of a limited data set for research purposes

Recession: January 2005, September 2012

Privacy Office at a glance! Visit... [VHA Privacy Office SharePoint Site](#)

VHA personnel should contact the VHA Privacy Office via email through the [VHA Privacy Issues](#) mail group.

