



## DoD INSTRUCTION 6040.48

# PERSONAL HEALTH RECORDS (PHR) AND PATIENT-CONTROLLED DATA

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**Originating Component:** Office of the Under Secretary of Defense for Personnel and Readiness

**Effective:** October 23, 2018

**Releasability:** Cleared for public release. This issuance is available on the Directives Division Website at <http://www.esd.whs.mil/DD/>.

**Approved by:** Stephanie Barna, Performing the Duties of the Under Secretary for Personnel and Readiness

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**Purpose:** In accordance with the authority in DoD Directive 5124.02 and the July 27, 2018 Secretary of Defense Memorandum, this issuance:

- Establishes policy and assigns responsibilities for a PHR and patient-controlled data.
- Provides a common policy framework and supporting responsibilities to serve as a foundation for ongoing development of a DoD-supported PHR containing data controlled by patients.
- Describes the relationship between the PHR and the DoD Health Record as defined in DoD Instruction (DoDI) 6040.45.

## TABLE OF CONTENTS

SECTION 1: GENERAL ISSUANCE INFORMATION .....	3
1.1. Applicability. ....	3
1.2. Policy. ....	3
SECTION 2: RESPONSIBILITIES .....	4
2.1. Deputy Assistant Secretary of Defense for Health Services Policy and Oversight. ....	4
2.2. Director, Defense Health Agency (DHA). ....	4
2.3. Secretaries of the Military Departments. ....	5
SECTION 3: PHR PROCEDURES.....	6
GLOSSARY .....	8
G.1. Acronyms. ....	8
G.2. Definitions.....	8
REFERENCES .....	9

## **SECTION 1: GENERAL ISSUANCE INFORMATION**

**1.1. APPLICABILITY.** This issuance applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

**1.2. POLICY.** It is DoD policy that the Military Health System (MHS) will provide, for individuals whose medical records it maintains, the opportunity to create an electronically accessed and stored PHR. Patient-controlled data includes data that may be copied from the DoD Health Record, as well as any patient-generated data or data copied from other sources.

## SECTION 2: RESPONSIBILITIES

### 2.1. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR HEALTH SERVICES

**POLICY AND OVERSIGHT.** Under the authority, direction, and control of the Assistant Secretary of Defense for Health Affairs, the Deputy Assistant Secretary of Defense for Health Services Policy and Oversight develops policy, provides oversight, and monitors DoD compliance with this issuance.

**2.2. DIRECTOR, DEFENSE HEALTH AGENCY (DHA).** Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, and through the Assistant Secretary of Defense for Health Affairs, the Director, DHA:

a. Develops and distributes procedural instructions or guidance to support and implement this issuance. This guidance will address:

(1) Beneficiary eligibility for a PHR based on age and beneficiary category.

(2) Data standards for the types of data received from the DoD Health Record, other DoD sources, and external sources such as home and personal medical devices.

(3) Data exchange standards.

(4) Responsibilities in the event of a breach of protected health information.

(5) Detailed instructions for maintenance, use, and access to PHR data.

(6) Disposition guidance, including destruction of data and documentation.

b. Confirms that PHR systems provided are compliant with this issuance and with DoD cybersecurity, privacy, and security policy consistent with DoDI 8500.01, DoDI 8580.02, and DoDI 6025.18.

c. Directs coordination with the Defense Information Systems Agency as necessary for the development of any PHR components that rely on Defense Information Systems Agency support.

d. Issues procedural guidance that specify MHS health care provider responsibilities regarding patient-initiated communications, including but not limited to sharing data to and from a PHR, secure messaging, and telephone consultation requests.

(1) Patients must be informed that PHR information will not be available to DoD health care providers, unless patients make a deliberate choice or take specific measures to share that information with providers, for example by sending a copy of the information in a secure message.

(2) DoD health care professionals will take responsibility for copies of PHR data shared with them by the patient as prescribed by DoD clinical guidance issued by the DHA or the Military Departments pertaining to secure messaging, telephone calls, and other patient initiated communication.

**2.3. SECRETARIES OF THE MILITARY DEPARTMENTS.** The Secretaries of the Military Departments will ensure that MHS entities under their direction support the implementation of this issuance.

## SECTION 3: PHR PROCEDURES

**3.1.** The PHR contains information controlled by the patient, in contrast with the DoD Health Record that is fully controlled and managed by the MHS. The PHR is not a part of the official medical record generated and controlled by military treatment facilities and MHS health care providers. Thus, the PHR is not a part of the DoD Health Record as defined in DoDI 6040.45. In addition, the PHR is not a part of the “designated record set” as defined by DoDI 6025.18, which implemented Parts 160 and 164 of Title 45, Code of Federal Regulations.

**3.2.** The PHR may also provide access to data that reside in a system under DoD control, and those data will be managed in compliance with an applicable System of Records Notice. Patients may choose to access or manage a PHR in a system offered by DoD or they may choose to use a non-DoD provided system.

**3.3.** Separate PHRs for family member beneficiaries may be established, to the extent consistent with beneficiary eligibility criteria. Patients may designate family members, health providers, or other representatives who may be given access to their PHRs or permitted to add or edit PHR content. Implementation guidance developed to comply with applicable national standards will be developed to describe parental access to PHRs of minors. This guidance will be consistent with the guidance issued for parental access to the DoD Health Records of minors through other DoD patient access systems.

**3.4.** In order to facilitate the exchange of information across the entire health information environment, patients will be provided electronic system capabilities to copy or send information to their PHRs from the DoD Health Record, other DoD sources, and external sources such as home and personal medical devices. The DoD may develop and make available to beneficiaries tools for automated transmittals from those sources to PHRs. Such electronic system tools must employ data standards applicable to both the type of data received from those sources and how the data is exchanged, in accordance with DHA guidance. To the extent any information is copied from a DoD system or sent to a DoD system, the patient user of the DoD system must comply with all applicable Defense Information Systems Agency and DoD requirements. Deployed individuals may copy or send information to their PHRs from the DoD Health Record, other DoD sources, or external sources as permitted within the operational environment.

**3.5.** To facilitate the patient-directed exchange of health information, patients may share their PHR information with any physician or other health care professionals or institutions, as well as with non-clinical entities. PHR information will not be available to healthcare providers unless specifically released to the provider.

**3.6.** Patients who choose to retrieve information from the DoD Health Record will be provided with capabilities compliant with DoDI 8500.01 and DoDI 6025.18. Patients will be advised that if they copy or send a copy of the information to a system not offered by DoD, DoD no longer

has responsibility for the security of the information sent or copied to the new system. Information copied from a DoD offered system does not constitute a MHS certified copy.

**3.7.** The PHR capabilities provided to patients may include interoperability tools to facilitate data exchanges between patients and health care providers in accordance with national standards. With respect to information copied or sent by patients from DoD records, the tools must comply with DoD standards to preserve the contents and format of the DoD information to the extent determined feasible by the DoD.

**3.8.** In the case of a PHR offered by the DoD, patients separating from military service will be provided post-separation access to the data in a PHR for at least 12 months after separation. Such access must preserve the ability for the patient to share data with other health care systems and providers in the standard formats used by DoD. The disposition of information in a PHR that relies on DoD support that is no longer used by a patient will be managed in accordance with approved disposition schedules approved by the DHA Privacy Office and published prior to implementation of the PHR system. DoD is not responsible for maintaining information that originated in DoD systems which patients choose to copy into non-DoD offered systems.

**3.9.** As a general rule, PHRs are subject either to the breach rules of Section 13410(d), Title XIII of Public Law 111-5, also known as the Health Information Technology for Economic and Clinical Health Act, or the Federal Trade Commissions regulations at Part 318 of Title 16, Code of Federal Regulations. A PHR which is either offered by DoD as a covered entity or on behalf of DoD by a vendor will be subject to breach rules outlined in the Health Information Technology for Economic and Clinical Health Act. PHRs maintained neither by a covered entity nor on behalf of a covered entity by a vendor will be subject to the Federal Trade Commission regulation regarding breach notification.

**3.10.** PHR users must be issued a terms-of-use and privacy notice. Among other requirements, this notice must inform PHR users that they have exclusive control over their PHRs when the PHR is not maintained in a DoD information system or technology system under DoD control. When exclusively managed by the user, PHRs are not subject to Health Insurance Portability and Accountability Act and the Health Insurance Portability and Accountability Act military command exception.

## GLOSSARY

### G.1. ACRONYMS.

DHA	Defense Health Agency
DoDI	DoD instruction
MHS	Military Health System
PHR	personal health record

**G.2. DEFINITIONS.** Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

**beneficiary.** Individual eligible for health care services under Chapter 55 of Title 10, United States Code.

**Health Insurance Portability and Accountability Act military command exception.** Defined in DoDI 6025.18.

**patient-controlled data.** Data located in PHR, including data originating and copied from DoD health records and data downloaded or transmitted from home or personal medical devices.

**patient-generated data.** Health related data created, recorded, or gathered by patients, family members, or other caregivers to address a health concern or to monitor health.

**PHR.** Defined in the Health Information Technology Playbook.

**System of Records.** Defined in DoD Directive 5400.11

**System of Records Notice.** Defined in DoD Directive 5400.11



## REFERENCES

- Code of Federal Regulations, Title 16, Part 318
- Code of Federal Regulations, Title 45, Parts 160 and 164
- DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014
- DoD Instruction 6025.18, “Privacy of Individually Identifiable Health Information in DoD Health Care Programs,” December 2, 2009
- DoD Instruction 6040.45, “DoD Health Record Life Cycle Management,” November 16, 2015, as amended
- DoD Instruction 8500.01, “Cybersecurity,” March 14, 2014
- DoD Instruction 8580.02, “Security of Individually Identifiable Health Information in DoD Health Care Programs,” April 12, 2015
- Office of the National Coordinator for Health Information Technology, “Health IT Playbook,” current edition<sup>1</sup>
- Public Law 111-5, Title XIII, Subpart D, “Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009,” February 17, 2009
- Secretary of Defense Memorandum “Order and Terms of Succession to the Functions and Duties of the Under Secretary of Defense for Personnel and Readiness,” July 27, 2018
- United States Code, Title 10

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<sup>1</sup> Available on the internet at <https://www.healthit.gov/playbook/>