

NOTICE OF PRIVACY PRACTICES

1. SUMMARY OF MAJOR CHANGES: This directive:

a. Adds responsibilities for the Director, Information Access and Privacy; Chief Officer, Readjustment Counseling Service; Executive Director, VHA Member Services; Executive Director, Caregiver Support Program; and Assistant Under Secretary for Health for Integrated Veterans Care to paragraph 2.

b. Clarifies policy regarding dissemination of the Notice of Privacy Practices and modifies how enrolled Caregivers are to receive the Notice.

c. Provides the link for the Information Bulletin (IB) 10-163, Notice of Privacy Practices, in compliance with the provisions of the Standards for Privacy of Individually Identifiable Health Information (Health Insurance Portability and Accountability Act Privacy Rule), 45 C.F.R. parts 160 and 164.

2. RELATED ISSUES: VHA Directive 1605, VHA Privacy Program, dated September 1, 2017.

3. POLICY OWNER: The Office of Health Informatics (105), Health Information Governance (105HIG) is responsible for the contents of this directive. Questions may be referred to the Director, Information Access and Privacy Office at VHAPrivIssues@va.gov.

4. RESCISSIONS: VHA Handbook 1605.04, Notice of Privacy Practices, dated September 6, 2015, is rescinded.

5. RECERTIFICATION: This Veterans Health Administration (VHA) directive is scheduled for recertification on or before the last working day of February 2029. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

6. IMPLEMENTATION SCHEDULE: This directive is effective upon publication.

**BY DIRECTION OF THE OFFICE OF THE
UNDER SECRETARY FOR HEALTH:**

/s/ Steven Lieberman, MD, MBA
Deputy Under Secretary for Health

February 12, 2024

VHA DIRECTIVE 1605.04

NOTE: *All references herein to Department of Veterans Affairs (VA) and VHA documents incorporate by reference subsequent VA and VHA documents on the same or similar subject matter.*

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NOTICE OF PRIVACY PRACTICES

1. POLICY

It is Veterans Health Administration (VHA) policy that the VHA Notice of Privacy Practices (Information Bulletin 10-163) is created, maintained, and distributed in compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule at 45 C.F.R. § 164.520, to inform Veterans, beneficiaries, caregivers, and non-Veteran patients of the use and disclosure of their health information without authorization, their rights to access and restrictions on certain uses and disclosures and VHA's legal duties to maintain the privacy of their health information. **AUTHORITY:** 45 C.F.R. parts 160 and 164.

2. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health is responsible for ensuring overall VHA compliance with this directive.

b. **Deputy Under Secretary for Health.** The Deputy Under Secretary for Health is responsible for supporting the Office of Information Access and Privacy with implementation and oversight of this directive.

c. **Assistant Under Secretary for Health for Operations.** The Assistant Under Secretary for Health for Operations is responsible for:

(1) Communicating the contents of this directive to each of the Veterans Integrated Services Networks (VISNs).

(2) Assisting VISN Directors to resolve implementation and compliance challenges in all Department of Veterans Affairs (VA) medical facilities within that VISN.

(3) Providing oversight of VISNs to ensure compliance with this directive and its effectiveness.

d. **Assistant Under Secretary for Health for Integrated Veteran Care.** The Assistant Under Secretary for Health for Integrated Veteran Care (IVC) is responsible for:

(1) Ensuring any non-Veteran enrolled in a VHA Program that provides health care (e.g., Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Spina Bifida, Children of Women Vietnam Veterans) receives a Notice of Privacy Practices.

(2) Directing questions regarding the Notice of Privacy Practices to the VHA Privacy Operations Officer.

e. **Chief Informatics Officer.** The Chief Informatics Officer is responsible for ensuring that Information Access and Privacy has the funding and support required to accomplish the mailing of the Notice of Privacy Practices as outlined in paragraph 5.

f. **Director, Information Access and Privacy.** The Director, Information Access and Privacy is responsible for:

(1) Providing oversight for the VISN and VA medical facility compliance with this directive and ensuring that corrective action is taken when non-compliance is identified.

(2) Ensuring that administration-wide privacy policies and procedures for the Notice of Privacy Practices identified in paragraphs 3 through 8 are implemented.

(3) Approving the Notice of Privacy Practices and ensuring that it is compliant with the content requirements of the HIPAA Privacy Rule and maintained by VHA. (See paragraph 3.)

g. **VHA Privacy Operations Officer.** The VHA Privacy Operations Officer is responsible for:

(1) Drafting the Notice of Privacy Practices in compliance with content requirements as set forth in the HIPAA Privacy Rule and submitting to the Director, Information Access and Privacy for approval. The current Notice of Privacy Practices is located on the VHA Forms and Publications website at <https://vaww.va.gov/vhapublications/>.

NOTE: *This is an internal VA website that is not available to the public.*

(2) Revising the Notice of Privacy Practices in accordance with paragraph 8 and submitting to the Director, Information Access and Privacy for approval.

(3) Communicating to VHA employees VHA's legal obligations to:

(a) Ensure the privacy of protected health information (PHI).

(b) Provide notice of VHA's legal obligations and privacy practices with respect to their PHI.

(c) Follow the terms of the Notice of Privacy Practices currently in effect.

(4) Ensuring distribution of the Notice of Privacy Practices by VHA as a health plan to new VA health care beneficiaries in consultation with the Executive Director, VHA Member Services and Executive Director, Caregiver Support Program (CSP).

(5) Coordinating the mailing of the Notice of Privacy Practices to existing VA health care beneficiaries every 3 years as required by paragraph 5 to include requesting funding and contract support and coordinating with the Executive Director, VHA Member Services and Executive Director, CSP to obtain existing VA health care beneficiary mailing information.

(6) Answering questions regarding the Notice of Privacy Practices.

h. **Chief Officer, Readjustment Counseling Service.** The Chief Officer, Readjustment Counseling Service is responsible for:

(1) Ensuring any non-Veteran provided counseling or care in a Readjustment Counseling Center (Vet Center) receives a Notice of Privacy Practices and signs VA Form 10-0483, Acknowledgement of the Notice of Privacy Practices.

(2) Communicating to Vet Center staff the process for obtaining VA Form 10-0483, Acknowledgement of the Notice of Privacy Practices, from the individual and where to file or maintain the acknowledgements. The form can be found on the VA Forms website at <https://www.va.gov/find-forms>. **NOTE:** See paragraph 6 for information about the process.

(3) Ensuring Vet Center staff are aware of how to obtain copies of the Notice of Privacy Practices to provide to individuals upon request and as required by this directive.

(4) Ensuring that the Notice of Privacy Practices is posted in a prominent location in Vet Centers where it is reasonable to expect that individuals seeking service will be able to read the Notice of Privacy Practices. (See paragraph 4.)

(5) Directing questions regarding the Notice of Privacy Practices to the VHA Privacy Operations Officer.

i. **Executive Director, VHA Member Services.** The Executive Director, VHA Member Services is responsible for:

(1) Ensuring the Notice of Privacy Practices is provided to newly enrolled Veterans with their enrollment information (e.g., initial personalized handbook) referenced in paragraph 5.

(2) Ensuring VHA Member Services supports VHA Privacy Office's request for names and addresses of enrolled Veterans for the Notice of Privacy Practices mailing every 3 years, as required by paragraph 5.

(3) Ensuring Notice of Privacy Practices inquiries received within VHA Member Services are directed to the VA medical facility's Privacy Officer or VHA Privacy Office, as necessary.

j. **Executive Director, Caregiver Support Program.** The Executive Director, CSP is responsible for:

(1) Providing direction to VA medical facility CSP Programs on how to provide newly enrolled caregivers the Notice of Privacy Practices as part of the CSP enrollment packet.

(2) Providing requested support for mailing information (e.g., name and address) on enrolled caregivers for the Notice of Privacy Practices mailing every 3 years as required by paragraph 5.

(3) Directing questions regarding the Notice of Privacy Practices to the VHA Privacy Operations Officer.

k. **Veterans Integrated Services Network Director.** The VISN Director is responsible for ensuring that all VA medical facilities within the VISN comply with this directive and informing leadership when barriers to compliance are identified.

l. **VA Medical Facility Director.** The VA medical facility Director is responsible for:

(1) Ensuring overall VA medical facility compliance with this directive and that appropriate corrective action is taken if non-compliance is identified.

(2) Ensuring that the Notice of Privacy Practices, as outlined in this directive, is provided to Veterans, other beneficiaries who receive health care benefits from VA and non-Veteran patients who receive care at the VA medical facility. **NOTE:** *A hard copy of the Notice of Privacy Practices must be provided on request.*

(3) Ensuring that the Notice of Privacy Practices is posted in a prominent location where it is reasonable to expect that individuals seeking service will be able to read the Notice of Privacy Practices. (See paragraph 4.)

(4) Ensuring that copies of the Notice of Privacy Practices are available for distribution in response to an individual's request.

(5) Ensuring newly enrolled caregivers are provided the Notice of Privacy Practices as part of the CSP enrollment packet mailed by the VA medical facility.

(6) Ensuring that PHI is utilized and maintained by the VA medical facility only for purposes outlined in the Notice of Privacy Practices.

(7) Ensuring that VA medical facility staff disclose PHI contained in records maintained by VHA only for purposes outlined in the Notice of Privacy Practices and only when authorized by law.

(8) Ensuring that Veterans, beneficiaries or non-Veteran patients are informed of their rights to exercise any of the privacy rights outlined in the Notice of Privacy Practices related to their PHI maintained in VHA records.

m. **VA Medical Facility Privacy Officer.** The VA medical facility Privacy Officer is responsible for:

(1) Ensuring VA medical facility staff members are aware of how to obtain copies of the Notice of Privacy Practices to provide to individuals upon request and as required by this directive.

(2) Communicating to administrative staff, Employee Occupational Health staff and principal investigators for research studies about the process for obtaining VA Form 10-0483, Acknowledgement of the Notice of Privacy Practices, from the individual. The form can be found on the VA Forms website at <https://www.va.gov/find-forms>. **NOTE:** See paragraph 6 for information about the process.

(3) Performing quarterly reviews of acknowledgement forms in encrypted emails from the administrative staff and performing quarterly reviews of acknowledgement forms from the principal investigators of research studies to validate the signed acknowledgement forms of non-Veterans.

(4) Ensuring that the acknowledgement forms for VA employees are kept in the Employee Occupational Health Office and ensuring that the other forms for research studies are kept in the Research Office or are scanned into the non-Veteran's electronic health record (EHR). **NOTE:** If an acknowledgement form was not received an appropriate note should have been entered into the non-Veteran's health record or in the Employee Medical File.

(5) Providing the Notice of Privacy Practices to individuals upon their written request.

(6) Answering questions regarding the Notice of Privacy Practices.

(7) Establishing a process for reviewing reports of non-Veteran encounters to spot-check the existence of the acknowledgement form (see paragraph 7.c.(3)(b) for additional details).

n. **VA Medical Facility Caregiver Support Program Coordinator.** The VA medical facility CSP Coordinator is responsible for:

(1) Providing newly enrolled caregivers the Notice of Privacy Practices as part of their CSP enrollment packet.

(2) Directing questions regarding the Notice of Privacy Practices to the VA medical facility Privacy Officer.

o. **VA Medical Facility Administrative Staff, Vet Center Staff, VA Members Of Research Study Teams and Health Information Management Scanning Staff.** VA medical facility administrative staff, Vet Center staff, VA members of research study teams and Health Information Management scanning staff are responsible for:

(1) Providing the Notice of Privacy Practices and obtaining an acknowledgement form from non-Veteran patients or research subjects indicating they have received the Notice of Privacy Practices, and documenting its receipt, in accordance with the process in paragraph 7.

(2) Sending an encrypted email to the VA medical facility Privacy Officer with the full name of the non-Veteran and the non-Veteran's date of birth after obtaining the signed acknowledgement form from the non-Veteran at a VA medical facility encounter.

(3) Providing a printed copy of the Notice of Privacy Practices to any non-Veteran patient or research subject upon their in-person verbal request.

(4) Referring individuals or others with questions regarding the Notice of Privacy Practices to the VA medical Facility Privacy Officer or VHA Privacy Operations Officer, as appropriate.

p. **Employee Occupational Health Personnel.** Employee Occupational Health (EOH) Personnel are responsible for:

(1) Ensuring that individuals receive the Notice of Privacy Practices in accordance with Paragraph 6.

(2) Referring individuals with questions regarding the Notice of Privacy Practices to the VA medical facility Privacy Officer.

3. CONTENT OF THE NOTICE OF PRIVACY PRACTICES

The Notice of Privacy Practices must meet the content requirements of the HIPAA Privacy Rule, as described in the following paragraphs. **NOTE:** *The drafting of the Notice of Privacy Practice for VHA is the responsibility of the VHA Privacy Office. VA health care VISNs and VA medical facilities are not permitted to draft any separate Notice of Privacy Practices.*

a. **General Requirements.** This Notice must contain:

(1) A paragraph, either as a header or otherwise prominently displayed, stating: "THIS NOTICE DESCRIBES HOW HEALTH INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."

(2) A statement that VHA is required by law to maintain the privacy of PHI and to provide individuals with notice of VHA's legal obligations and privacy practices with respect to PHI.

(3) A statement that VHA is required to abide by the terms of its Notice of Privacy Practices.

(4) The title and telephone number of a person or office to contact for further information.

(5) The date when the current version of the Notice of Privacy Practices is first in effect. This date must not be earlier than the date on which the Notice of Privacy Practices is printed or otherwise published.

b. Use and Disclosure of Health Information.

(1) The Notice of Privacy Practices must state that VHA is permitted to use and disclose an individual's health information for the purposes of treatment, payment, and health care operations without the individual's authorization. Examples must be included in each of the descriptions.

(2) The Notice of Privacy Practices must describe all the other purposes for which VHA is permitted or required to use or disclose an individual's PHI without the individual's authorization. Descriptions must contain sufficient detail so that the individual reading the Notice of Privacy Practices understands the permitted uses and disclosures of the information.

(3) If a use or disclosure described in the Notice of Privacy Practices is prohibited or limited by other applicable law, the description of such use or disclosure must reflect the more stringent law.

(4) The Notice of Privacy Practices must contain a statement that all other uses and disclosures of PHI are to be made only with the individual's written authorization and that the individual may revoke such authorization.

(5) If VHA intends to engage in any of the following activities, a description of the use and disclosure is required in the Notice of Privacy Practices:

(a) Contacting the individual to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to the individual;

(b) Contacting an individual to raise funds for VHA; or

(c) Disclosing PHI to the sponsor of the plan when the individual is a member of a group health plan, a Health Maintenance Organization, or a health insurance issuer for payment purposes.

c. **Individual's Rights.** The Notice of Privacy Practices must contain a statement of the individual's rights with respect to PHI and a brief description of how the individual may exercise these rights. The following rights must be described in the Notice of Privacy Practices:

(1) The right to review and receive a copy of the individual's own PHI.

(2) The right to receive confidential communications of PHI.

(3) The right to request an amendment to the individual's own PHI.

(4) The right to receive an accounting of disclosures of the individual's own PHI.

(5) The right to request restrictions on certain uses and disclosures of the individual's own PHI, including a statement that VHA is not required to agree to a requested restriction.

(6) The right of the individual to receive a printed copy of the Notice of Privacy Practices upon request, even if the individual has agreed to receive the Notice of Privacy Practices electronically.

d. **Changes to the Notice of Privacy Practices.** The Notice of Privacy Practices must contain a statement that VHA reserves the right to change the terms of the Notice of Privacy Practices and to make the new Notice of Privacy Practices provisions effective for all PHI VA maintains. A description of how the revised Notice of Privacy Practices is to be disseminated and communicated to the individual must also be outlined in the Notice of Privacy Practices.

e. **Complaints.** The Notice of Privacy Practices must contain a statement that the individual may file a complaint with the facility Privacy Officer, VHA Privacy Office, the Secretary of the Department of Health and Human Services, or the VA Office of Inspector General if the individual feels the individual's privacy rights have been violated. The statement must include a brief description on how the individual may file a complaint and with whom and that the individual will not be retaliated against for filing a complaint.

f. **Optional Elements.** The following are optional elements that may be included in the Notice of Privacy Practices:

(1) If VHA elects to limit the uses or disclosures that it is permitted to make under the HIPAA Privacy Rule (45 C.F.R. parts 160 and 164), VHA may describe its more limited uses or disclosures in the Notice of Privacy Practices provided that VHA may not include in its Notice of Privacy Practices a limitation affecting its right to make a use or disclosure that is required by law.

(2) To apply a change to a more limited use and disclosure of PHI, VHA must state in the Notice of Privacy Practices that VHA reserves the right to change its privacy practices.

g. **Language and Style of the Notice of Privacy Practices.** Language and style of the Notice of Privacy Practices must be organized so that the reader can easily understand it, and it must contain short sentences that use an active voice such as "you."

h. **Retention.** In accordance with 45 C.F.R. § 164.520(e) VHA must document compliance with the requirements of the Notice of Privacy Practices as required by 164.530(j), by retaining copies of the Notice of Privacy Practices issued by VHA while in effect and for a minimum of 6 years after a new Notice of Privacy Practices has been written. A previous Notice of Privacy Practices must be destroyed by appropriate means 6 years after it is no longer in effect.

4. GENERAL DISSEMINATION OF THE NOTICE OF PRIVACY PRACTICES

a. The Notice of Privacy Practices is available on VHA's Publication website at <https://www.va.gov/vhapublications/publications.cfm?Pub=8>. VHA personnel can provide a printed copy of the Notice of Privacy Practices or a 'large print' copy of the Notice of Privacy Practices in response to an individual's request. The large print version can be found on the VHA Privacy Office website at <https://dvagov.sharepoint.com/sites/vacovetsprivacy/vhapo/Pages/laws.aspx>. **NOTE:** *This is an internal VA website that is not available to the public.*

b. VA medical facilities and Vet Centers are required to post the current Notice of Privacy Practices in a prominent location where it is reasonable to expect that individuals seeking service will be able to read the Notice of Privacy Practices (e.g., Release of Information Office, Eligibility Office, Employee Occupational Health, VA medical facility lobby). VA medical facilities and Vet Centers may re-stock the Notice of Privacy Practices Posters, by contacting the appropriate Publications Control Officer (PCO). **NOTE:** *The PCO information can be accessed through the PCO portal at <https://dvagov.sharepoint.com/sites/VACOVHACOS/10B4/PCO/SitePages/Home.aspx>. This is an internal VA website that is not available to the public.*

c. The Notice of Privacy Practices can be provided to an individual by email when requested; however, if the email transmission fails, a paper copy of the Notice of Privacy Practices must be provided instead. Therefore, it is recommended that the Notice of Privacy Practices be provided through VHA's Publication website(s) or by a printed copy unless the individual specifically requests the Notice through email.

d. The Notice of Privacy Practices must be made available by VHA upon request of an individual. All written requests for a copy of the Notice of Privacy Practices should be referred to a Privacy Officer. VHA personnel must provide a copy of the Notice of Privacy Practices upon in-person verbal request from the individual.

5. PROVIDING THE NOTICE OF PRIVACY PRACTICES TO VETERANS, BENEFICIARIES AND ENROLLED CAREGIVERS

a. A copy of the Notice of Privacy Practices must be provided to all Veterans enrolled in VA health care and to all Veterans who receive counseling, care, or treatment from VA but who are not required or eligible to enroll.

(1) The Notice of Privacy Practices must be included with other enrollment information sent to newly enrolled Veterans by Member Services through the Health Eligibility Center.

(2) The Notice of Privacy Practices must be provided to any Veteran who requests medical treatment or care at the time they apply for enrollment in person at a VA medical facility.

b. A copy of the Notice of Privacy Practices must be provided to any beneficiary of a VHA program that provides health care benefits to individuals other than Veterans (e.g.,

CHAMPVA, Spina Bifida, Children of Women Vietnam Veterans). The Assistant Under Secretary for Health for Integrated Veteran Care must ensure that beneficiaries of those programs receive a Notice of Privacy Practices upon enrollment.

c. A copy of the Notice of Privacy Practices must be provided to any enrolled caregiver for health care benefits. The Executive Director, Caregiver Support Program must ensure processes exist to ensure that beneficiaries of those programs receive a Notice of Privacy Practices upon enrollment.

d. Currently enrolled or eligible to enroll Veterans, enrolled caregivers and beneficiaries must be notified of the availability of the Notice of Privacy Practices and either provided a copy of the Notice or directions on how to obtain a copy no less than once every 3 years. Dissemination may be provided through the email on file, if the individual has agreed to electronic notice and such agreement has not been withdrawn; and a process for identifying any email deliver failure has been established. Any email delivery failure requires dissemination through the United States Postal Service.

e. VHA must prominently post its Notice of Privacy Practices on its public website at <https://www.va.gov/health/>. This includes posting it on the website(s) for any programs that provide health care benefits to individuals other than Veterans.

6. PROVIDING THE NOTICE OF PRIVACY PRACTICES TO APPLICANTS AND EMPLOYEES

a. EOH personnel must provide a copy of the Notice of Privacy Practices to employees and applicants for employment at their first encounter in EOH as required by this directive.

(1) EOH personnel must collect an Acknowledgement of the Notice of Privacy Practices form from applicants for employment seen in EOH at every new pre-placement examination and evaluation conducted in person or virtually any time there is PHI or PII collected.

(2) EOH personnel must collect an Acknowledgment of the Notice of Privacy Practices from new employees who enter on duty into a position, employees who transfer to the gaining VA medical facility upon initial encounter in EOH and any time there is a material change to the Notice of Privacy Practices. EOH programs must establish a monitoring system to track completion of acknowledgement forms, as required by this directive.

b. The employee or applicant for employment must acknowledge receipt of the Notice of Privacy Practices.

(1) EOH personnel must make a good faith effort to obtain a written acknowledgment (use VA Form 10-0483, Acknowledgement of the Notice of Privacy Practices) of receipt of the Notice of Privacy Practices.

(2) EOH personnel must maintain a copy of the acknowledgment form in a binder, applicant file, or the employee medical folder, which is kept in EOH. EOH is not required to send an encrypted email to the VA medical facility Privacy Officer when receipt of the Acknowledgement of Notice of Privacy Practices form is obtained.

c. The process for writing a health record note when an acknowledgement form for the receipt of the Notice of Privacy Practices cannot be obtained is as follows:

(1) If an Acknowledgement of the Notice of Privacy Practices is not received from an applicant for employment, then a note must be immediately placed in the applicant's file indicating that good faith efforts were made to obtain the written acknowledgement and the reason(s) why the acknowledgment was not received.

(2) If an Acknowledgement of the Notice of Privacy Practices is not received from an employee, a note must be immediately entered into the employee medical folder indicating good faith efforts were made to obtain the written acknowledgement and the reason(s) why the acknowledgment was not received.

7. PROVIDING THE NOTICE OF PRIVACY PRACTICES TO OTHER NON-VETERAN PATIENTS

a. VHA must provide a copy of the Notice of Privacy Practices to and obtain the Acknowledgement of Notice of Privacy Practices from all non-Veteran patients (e.g., active duty Service members or those seeking care in humanitarian circumstances) receiving care or treatment at a VA medical facility or counseling at a Vet Center, or non-Veteran research subjects enrolled in an approved VHA clinical trial research study. **NOTE:** Paragraph 7 does not apply to Veterans and enrolled caregivers as they have already received their copy of the Notice of Privacy Practices in the mail according to paragraph 5.

(1) VA medical facilities must provide the Notice of Privacy Practices and obtain the Acknowledgement of the Notice of Privacy Practices receipt when the non-Veteran patient checks in for their treatment or care (with or without an appointment) at the episode of care or encounter attended, their first research visit associated with a clinical trial episode of care, or when the non-Veteran patient is admitted to the VA medical facility.

(2) If the non-Veteran patient is seen in the Emergency Department, the Notice of Privacy Practices must be provided and the Acknowledgement of the Notice receipt obtained as soon as practical after the emergency treatment situation has ended but prior to the completion of the episode of care or encounter. Employees seen in the Emergency Department are not considered as being seen in the EOH and must be provided the Notice of Privacy Practices and Acknowledgement of Notice receipt. If not, a note is to be written in the EHR documenting the reason the Notice of Privacy Practices was not given.

(3) Pharmacy medication pick-up, laboratory appointments, care-related telephone calls, immunization review, and tuberculosis screening are not considered episodes of

care; therefore, a Notice of Privacy Practices is not required to be provided to the non-Veteran patient or research subject during these appointments.

(4) Vet Center staff must provide the Notice of Privacy Practices and obtain the Acknowledgement of the Notice of Privacy Practices receipt when the non-Veteran patient attends a joint or family counseling appointment with the Veteran.

b. The non-Veteran patient or non-Veteran research subject must acknowledge receipt of the Notice of Privacy Practices.

(1) VHA must make a good faith effort to obtain a written acknowledgment of receipt of the Notice of Privacy Practices as described in paragraph 7.d.(1) below, using VA Form 10-0483, Acknowledgement of the Notice of Privacy Practices. This acknowledgment is required to be obtained within 24 hours of the first episode of care or appointment.

(2) If the non-Veteran has a personal representative, the Notice of Privacy Practices may be given to and the written acknowledgment obtained from the personal representative.

c. The process for obtaining an acknowledgment for the receipt of the Notice of Privacy Practices is as follows:

(1) The non-Veteran patient, or non-Veteran research subject, is given the Notice of Privacy Practice.

(2) The administrative staff for the area where they work or a member of the research team for the clinical trial research study is responsible for having the VA Form 10-0483, Acknowledgement of Notice of Privacy Practices, signed and dated by the non-Veteran patient or non-Veteran research subject.

(3) For VA medical facilities, after the non-Veteran has signed the acknowledgement form, either:

(a) The administrative staff for the area where they work or a member of the clinical trial research study team must send an encrypted email to the VA medical facility Privacy Officer with the full name of the non-Veteran and the non-Veteran's date of birth; or

(b) The VA medical facility Privacy Officer must establish a process for reviewing reports of non-Veteran encounters to spot-check the existence of the acknowledgement form.

(4) For VA medical facilities, the administrative staff for the area where they work or a member of the clinical trial research study team must send the signed VA Form 10-0483, Acknowledgement of Notice of Privacy Practices, to the scanning department in Health Information Management (HIM). HIM scanning staff must scan the acknowledgment page into the non-Veteran's patient medical records in Veterans

Information Systems and Technology Architecture (VistA)/ Computerized Patient Record System (CPRS) record as “Notice of Privacy Practices Acknowledgment” under the administrative tab or in Oracle Cerner as: “Notice of Privacy Practices” for the document type in PowerChart.

(5) A member of the research team must maintain a copy of a research subject’s acknowledgement in the subject’s research record.

(6) For Vet Centers, after the non-Veteran has signed the acknowledgement, a copy must be maintained by Vet Center staff as directed by the Chief Officer, Readjustment Counseling Service.

d. The process for writing an EHR note when there is no acknowledgement form for the receipt of the Notice of Privacy Practices was not obtained is as follows:

(1) If an acknowledgement of the Notice of Privacy Practices is not received from the non-Veteran patient, an administrative note must be entered into the EHR indicating the good faith efforts made to obtain the written acknowledgement and the reason(s) why the acknowledgment was not received.

(2) The note needs to be written by the administrative staff responsible for registering the non-Veteran patient or by a member of the research team who also obtains the non-Veteran research subject’s informed consent.

8. REVISION OF THE NOTICE OF PRIVACY PRACTICES

a. The Notice of Privacy Practices must be promptly revised and re-distributed by the VHA Privacy Office whenever there is a material change to:

(1) VHA’s use or disclosure of PHI.

(2) The individual’s privacy rights.

(3) VHA’s legal duties to protect the privacy of health information, including revisions to the HIPAA Privacy Rule.

(4) Other privacy practices stated in the Notice of Privacy Practices.

b. Except when required by law, a material change to any term of the Notice of Privacy Practices cannot be implemented prior to the effective date of the Notice of Privacy Practices in which such material change is reflected.

c. Within 60 days of a material change or revision, VHA must prominently post the revised Notice of Privacy Practices on its public website at <https://www.va.gov/health/>. This include posting it on the website(s) for any program that provide health care benefits to individuals other than Veterans.

d. Within one year of the material change, the Notice of Privacy Practices must be distributed to all Veterans, enrolled caregivers, and their other beneficiaries who are enrolled for VA health care services, through the United States Postal Service or other VA-approved process.

9. TRAINING

There are no formal training requirements associated with this directive.

10. RECORDS MANAGEMENT

All records regardless of format (e.g., paper, electronic, electronic systems) created by this directive must be managed as required by the National Archives and Records Administration (NARA) approved records schedules found in VHA Records Control Schedule 10-1. Questions regarding any aspect of records management should be addressed to the appropriate Records Officer.

11. BACKGROUND

In accordance with HIPAA P.L. 104-91, the Veterans health care benefits program under 38 U.S.C. Chapter 17 is a health plan. Since VHA is both a health plan and a health care provider under HIPAA, VHA is only required to comply with the HIPAA Privacy Rule Notice of Privacy Practices dissemination provisions at 45 C.F.R. § 164.520(c) as one or the other covered entity, not as both. VHA complies with the dissemination of the Notice of Privacy Practices to Veterans, caregivers, and other beneficiaries enrolled in VHA Programs as a health plan. VHA complies with the dissemination of the Notice of Privacy Practices to non-Veteran patients as a health care provider.

12. DEFINITIONS

a. **Applicant.** For purposes of this directive, an applicant is an individual who has applied for employment with VA and has not officially been hired by VA because of pending background checks, pre-placement examinations, and evaluations or other HR hiring requirement.

b. **Beneficiary.** For the purposes of this directive, a beneficiary is a dependent or survivor of a Veteran who is receiving health care benefits through one of the following programs administered by VA: the CHAMPVA; the Spina Bifida Program, or the Program for Children of Women Vietnam Veterans.

c. **Enrolled Caregiver.** An enrolled caregiver is an individual authorized to receive support services through VA's Program of Comprehensive Assistance for Family Caregivers or Program of General Caregiver Support Services authorized under 38 U.S.C. § 1720G and implemented under 38 C.F.R. §§ 71.15 (Program of Comprehensive Assistance for Family Caregivers) and 71.35 (Program of General Caregiver Support Services).

d. **Disclosure.** Disclosure is the release, transfer, or provision of; access to; or divulging in any other manner of information outside VHA.

e. **Episode of Care.** An episode of care refers to all treatment rendered in a specified timeframe (e.g., outpatient care visit) for a specific condition or disease.

f. **Health Information.** Health Information is any information, whether oral or recorded in any form or medium, created, or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, or health plan that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or payment for the provision of health care to an individual. This encompasses information pertaining to examination, medical history, diagnosis, and findings or treatment, including laboratory examinations, X-rays, microscopic slides, photographs, and prescriptions.

g. **Individual.** For the purposes of this directive, an individual is a Veteran, a beneficiary who receives health care benefits from VA or a non-Veteran patient who receives care at a VA health care facility.

h. **Non-Veteran Patient.** A non-Veteran patient is an individual seeking counseling, medical care or treatment at a VA health care facility who is not enrolled in VA health care, such as active-duty Service members, eligible family members who are not enrolled caregivers, a living organ donor, or anyone provided with medical care for humanitarian purposes (e.g., in a medical emergency).

i. **Personal Representative.** For the purposes of this directive, a personal representative is a person who, under applicable law, has authority to act on behalf of the individual to include privacy-related matters. The authority may include a Power of Attorney, legal guardianship of the individual, appointment as executor of the estate of a deceased individual, or a Federal, State, local, or tribal law that establishes such authority (e.g., parent of a minor).

j. **Personnel.** For the purposes of this directive, personnel includes VHA officers, employees, consultants, without compensation (WOC) appointees, contractors, health professions trainees, and uncompensated services volunteer workers (excluding patient volunteers) providing a service at the direction of VHA staff. ***NOTE: Applicants for employment are not VA personnel.***

k. **Protected Health Information.** The HIPAA Privacy Rule defines PHI as individually identifiable health information transmitted or maintained in any form or medium by a covered entity, such as VHA. ***NOTE: VHA uses the term PHI to define information that is covered by HIPAA but unlike individually identifiable health information, may or may not be covered by the Privacy Act or title 38 confidentiality statutes. PHI excludes employment records held by VHA in its role as an employer, even if those records include information about the health of the employee obtained by VHA in the course of employment of the individual.***

l. **Record.** A record is any item, collection, or grouping of information about an individual that is maintained by VHA, including, but not limited to: education; financial transactions; medical history; treatment; and criminal or employment history that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. Records include information that is stored in paper records or in electronic format, on computers, minicomputers, personal computers, or word processors. **NOTE:** *Tissue samples are not considered a record.*

m. **Treatment.** Treatment is the provision, coordination, or management of health care or related services, by one or more health care providers. This includes:

- (1) The coordination of health care by a health care provider with a third party.
- (2) Consultation between providers relating to a patient.
- (3) The referral of a patient for health care from one health care provider to another.

n. **Use.** Use is the sharing, employment, application, utilization, examination, or analysis of information within VHA.

o. **VA Medical Facility.** For the purpose of this directive, VA medical facility means VA medical centers, VA health care systems, CBOCs, and VA Community Living Centers that provide inpatient, long-term care, and ambulatory care services to patients within a VISN.

13. REFERENCES

- a. P.L. 104-91.
- b. 38 U.S.C. Chapter 17.
- c. 38 C.F.R. §§ 71.15 and 71.30(a).
- d. 45 C.F.R. parts 160, 164.
- e. VHA Directive 1605, VHA Privacy Program, dated September 1, 2017.
- f. VA Form 10-0483, Acknowledgement of the Notice of Privacy Practices.
- g. PCO Portal.

<https://dvagov.sharepoint.com/sites/VACOVHACOS/10B4/PCO/SitePages/Home.aspx>.

NOTE: *This is an internal VA website that is not available to the public.*

- h. VHA Privacy Office Website.

<https://dvagov.sharepoint.com/sites/vacovetsprivacy/vhapo/Pages/laws.aspx>. **NOTE:**

This is an internal VA website that is not available to the public.