



Department of Defense DIRECTIVE

NUMBER 6040.37

July 9, 1996

ASD(HA)

SUBJECT: Confidentiality of Medical Quality Assurance (QA) Records

- References:
- (a) DoD Directive 6040.37, subject as above, July 3, 1990 (hereby canceled)
 - (b) Section 1102 of title 10, United States Code
 - (c) Sections 552 and 552a of title 5, United States Code
 - (d) DoD Directive 6025.13, "Clinical Quality Management Program (CQMP) in the Military Health Services System (MHSS)," July 20, 1995
 - (e) DoD 6010.8-R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," July 1991, authorized by DoD Instruction 6010.8, October 24, 1984
 - (f) Sections 11131-11152 of title 42, United States Code, "The Health Care Improvement Act of 1986"

1. REISSUANCE AND PURPOSE

This Directive:

- 1.1. Administratively reissues reference (a).
- 1.2. Implements reference (b) in accordance with policies in references (c) and (d).

2. APPLICABILITY AND SCOPE

This Directive Applies to:

- 2.1. The Office of the Secretary of Defense, the Military Departments, the

Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities.

2.2. Civilian healthcare entities or individuals, when they provide medical QA information on healthcare of DoD beneficiaries to the Department of Defense.

2.3. The Peer Review Organization Program of the Civilian Health and Medical Program of the Uniformed Services as specified in reference (e).

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

4. POLICY

It is DoD policy that:

4.1. Medical QA records created by or for the Department of Defense, as part of a medical QA program, are confidential and privileged. They may not be made available to any person under the "Freedom of Information Act" (5 U.S.C. 552, reference (c)). As a system of records, they are within the purview of the "Privacy Act" (Section 552a of reference (c)) and, therefore, the individual healthcare provider who is the subject of an individual QA action may be entitled to access to the records. With the exception of such a provider, the identities of third parties in the record; i.e., any person receiving healthcare services (patients) from the Department of Defense or any other person associated with the DoD QA program, shall be deleted from the record before any disclosure of the record is made outside the Department of Defense. This identity deletion requirement does not apply to disclosures under Section 552a of reference (c), but other deletion requirements under Section 552a of reference (c) may apply in certain circumstances.

4.2. No part of any medical QA record may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except in accordance with 10 U.S.C 1102 (reference (b)).

4.3. A person who reviews or creates medical QA records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not testify in any judicial or administrative proceeding on such records or on any finding, recommendation, evaluation, opinion, or action taken by such person or body

for such records, except in accordance with reference (b).

4.4. A person or entity having possession of or access to medical QA records or testimony may not disclose the contents of such record or testimony in any manner or for any purpose, except in accordance with reference (b).

4.5. Any person who willfully discloses a medical QA record, other than as provided in reference (b), knowing that such record is a medical QA record, shall be subject to adverse personnel action (to include, in appropriate cases, dismissal or separation), and may be liable under reference (b) for a fine of not more than \$3,000 in the case of a first offense and not more than \$20,000 in the case of a subsequent offense.

4.6. Information on healthcare providers who are found to be incompetent, negligent, medically or psychiatrically impaired, or guilty of misconduct as defined in DoD Directive 6025.13 (reference (d)), shall be provided to Agencies specified in that Directive.

4.7. Information shall be submitted to the National Practitioner Data Bank, as instituted by 42 U.S.C. 11131-11152 (reference (f)), in accordance with applicable law and DoD Directives.

4.8. Aggregate statistical information on results of DoD medical QA programs may be provided in response to written requests.

4.9. As provided in 10 U.S.C. 1102 (reference (b)), a person who participates in or provides information to a person or body that reviews or creates medical QA records shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith, based on prevailing professional standards at the time the medical QA program activity took place.

4.10. Nothing in this Directive shall be construed as limiting access to the information in a record created and maintained outside a medical QA program, including a patient's medical records, on the grounds that the information was presented during meetings of a review body that are part of a healthcare QA program.

4.11. Standards for disclosure of medical QA records are set forth in enclosure 2.

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense for Health Affairs, under the Under Secretary of Defense for Personnel and Readiness, shall monitor implementation of this Directive and may issue such Instructions as may be necessary to implement this Directive. Instructions to the Military Departments shall be issued through the Secretaries of the Military Departments. The Assistant Secretary of Defense for Health Affairs may grant exceptions, to the extent allowed by law, to this Directive.

5.2. The Secretaries of the Military Departments shall implement the requirements of this Directive and any Instructions issued under subsection 5.1., above.

6. EFFECTIVE DATE

This Directive is effective immediately.

A handwritten signature in black ink, appearing to read "John P. White", is written over a horizontal line.

John P. White
Deputy Secretary of Defense

Enclosures - 2

1. Definitions
2. Standards for Disclosure of Medical QA Records

E1. ENCLOSURE 1

DEFINITIONS

E1.1.1. Aggregate Statistical Information. An assembled collection of numerical facts and other information or data derived from various DoD health program activities. Names, social security numbers, or other specific information that will identify or reasonably lead to identification of individual healthcare providers, patients, healthcare facilities, or other specific organizational entities may not be included in aggregate statistical data.

E1.1.2. Credentials. Documents providing evidence of education, training, licensure, experience, and expertise of a healthcare provider.

E1.1.3. Healthcare Provider. Any military or civilian healthcare professional who, under regulations of a Military Department, is granted clinical practice privileges or is in training to provide healthcare services in a military medical treatment facility (MTF) or dental treatment facility (DTF) or who is licensed or certified to perform healthcare services by a governmental board or Agency or professional healthcare society or organization.

E1.1.4. Healthcare QA Program. Any activity carried out before, on, or after the enactment of 10 U.S.C. 1102 (reference (b)) by or for the Department of Defense to assess the quality of medical care. This includes activities conducted by individuals, military MTF or DTF committees, contractors, military medical departments, or DoD Agencies responsible for QA, credentials review and clinical privileging, infection control, patient care assessment (including review of treatment procedures, therapeutics, blood use, medication use), review of healthcare records, health resources management review, and risk management review.

E1.1.5. Individual QA Action. A provider sanction, privileging action, or other activity on an individual healthcare provider intended to address a quality of healthcare matter. Such an action is based on processes structured by the QA program.

E1.1.6. Medical. Includes medical, mental health, and dental QA records, programs, activities, and information.

E1.1.7. QA Record. The proceedings, records, minutes, and reports that emanate from healthcare QA program activities and are produced or compiled by the Department of Defense as part of a healthcare QA program.

E2. ENCLOSURE 2

STANDARDS FOR DISCLOSURE OF MEDICAL QA RECORDS

E2.1.1. QA Records That Are Protected From Disclosure, Except as Described in Section 2, Below. Those records include, but are not limited to, the data, testimony, and working documents of any MTF or DTF, DoD contractor, Military Department, or DoD Agency involved in monitoring, assessing, or documenting quality of healthcare.

E2.1.2. DoD QA Records May Be Authorized for Disclosure or Testimony to the Following:

E2.1.2.1. A Federal Executive Agency, or private organization, if such medical QA record or testimony is needed by such Agency or organization to perform licensing or accreditation functions related to DoD healthcare facilities or to perform monitoring, required by law, of DoD healthcare facilities.

E2.1.2.2. An administrative or judicial proceeding commenced by a present or former DoD healthcare provider concerning the termination, suspension, or limitation of clinical privileges of such healthcare provider.

E2.1.2.3. A governmental board or Agency or a professional healthcare society of organization, if such medical QA record or testimony is needed by such board, Agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards of any healthcare provider who is, or was, a member or an employee of the Department of Defense.

E2.1.2.4. A hospital, medical center, or other institution that provides healthcare services, if such medical QA record or testimony is needed by such institution to assess the professional qualifications of any healthcare provider who is, or was, a member or employee of the Department of Defense and who has applied for, or has been granted, authority or employment to provide healthcare services in or on behalf of such institution.

E2.1.2.5. An officer, employee, or contractor of the Department of Defense who has need for such record or testimony to perform official duties.

E2.1.2.6. A criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that

such record or testimony be provided for a purpose authorized by law.

E2.1.2.7. An administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in paragraph E2.1.2.6, above, but only for the subject of such proceeding.

E2.1.3. Aggregate Statistical Information. Nothing in this Directive shall be construed as authorizing or requiring the withholding, from any person or entity, aggregate statistical information on the results of DoD medical QA programs.

E2.1.4. Congressional Requests. Nothing in this Directive shall be construed as authority to withhold any medical QA record from a committee of either House of Congress, any joint committee of Congress, or the General Accounting Office if such record pertains to any matter within their respective jurisdictions.