
**University of Wisconsin-Madison
Policy and Procedure**

Policy Number: 3.6
Policy Title: Uses an Disclosures of Protected Health Information for Marketing
Effective Date: July 25, 2014
Last Revision Date: September 22, 2014
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I. Policy

The HIPAA Privacy Rule and HITECH regulations permit limited uses and disclosures of protected health information for marketing activities conducted by a covered entity without patient authorization. UW-Madison follows HIPAA and HITECH regulations regarding when patients must provide written authorization for the use and disclosure of their protected health information for marketing activities and when no authorization is required for such activities.

II. Definitions

- A. **Business Associate:** A person or entity not affiliated with UW-Madison that performs or assists in performing, for or on behalf of any unit in the UW-Madison Health Care Component, business support functions/services that involve the use of Protected Health Information.
- B. **Covered Entity:** A health plan, health care clearinghouse, or health care provider that transmits any health information in electronic form in connection with a transaction covered by HIPAA.
- C. **Disclosure:** The release, transfer, provision of access to, or divulging in any manner of PHI by an individual within the HCC or ACE with a person or entity outside the HCC or ACE.
- D. **Financial Remuneration:** Direct or indirect payment from or on behalf of a third party whose product or service is being described. Direct or indirect payment does not include any payment for treatment of an individual.
- E. **Health Care Operations:** Any of a number of business and administrative activities, including
 - Conducting quality assessment and improvement activities
 - Reviewing the competence or qualifications of health care professionals
 - Conducting training programs.

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- Accreditation
- Credentialing
- Conducting or arranging for medical review, legal services and auditing functions
- Business planning and development
- Business management and general administrative activities

Health care operations do not include research and many fundraising and marketing activities. See in addition to this policy, Privacy Policy # 3.7 “Uses and Disclosures of Protected Health Information for Fundraising” for more information.

- F. HITECH: The Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, to promote the adoption and meaningful use of health information technology.
- G. Marketing: Except as otherwise described in this policy, marketing means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.
- H. Protected Health Information (“PHI”): Health information or health care payment information, including demographic information, which identifies the patient or can be used to identify the patient. PHI does not include student records held by educational institutions or employment records held by employers.
- I. University of Wisconsin Affiliated Covered Entity (“UW ACE”): The UW-Madison Health Care Component (except University Health Services and the State Laboratory of Hygiene), the University of Wisconsin Medical Foundation and the University of Wisconsin Hospital and Clinics. See Privacy Policy # 1.2 “Designation of UW Affiliated Covered Entity”.
- J. Use: The sharing, employment, application, utilization, examination, or analysis of PHI by an individual within the UW HCC or the UW ACE.

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- K. UW-Madison Health Care Component (“UW HCC”): Those units of the University of Wisconsin-Madison that have been designated by the University as part of its health care component under HIPAA. See Privacy Policy # 1.1 “Designation of UW-Madison Health Care Component” for a listing of these units.

III. Procedures

- A. Individuals within the UW HCC or UW ACE must evaluate prospective marketing communications to determine if an authorization is required under HIPAA or HITECH before PHI may be used or disclosed for marketing purposes. Written authorization is required for marketing activities unless an exception applies as described in this document.
- B. If a marketing activity involves financial remuneration to the UW HCC or UW ACE from a third party, then the authorization must specifically state that such remuneration is involved.
- C. Written authorization is required when the UW HCC or UW ACE uses or discloses PHI for marketing except that no authorization is required when:
1. The communication occurs in a face-to-face encounter with the individual;
 2. The communication involves a promotional gift of nominal value such as calendars, pens, or items that promote UW-Madison or the UW ACE.
- D. Uses or Disclosures of PHI That Do Not Constitute Marketing.
1. The UW HCC or UW ACE may use PHI to communicate with a patient about refill reminders or otherwise communicate about a drug or biologic that is current being prescribed for the individual so long as any financial remuneration received by the UW HCC or UW ACE is reasonably related to the covered entity’s cost of making the communication.

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2. The UW HCC or UW ACE may use PHI to communicate with a patient about the following matters so long as the UW HCC or UW ACE does not receive any financial remuneration in exchange for making the communication:
 - a. For treatment of an individual by a health care provider, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual;
 - b. To describe a health related product or service, or payment for the product or service that is provided by, or included in the covered entity's plan of benefits.
 - c. For case management or care coordination, contacting of individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment.

IV. Documentation Requirements

The UW HCC unit must document and maintain all patient/client authorizations for a period of at least six years, from the date of its creation or the date when it last was in effect, whichever is later.

V. Forms

Marketing/Fundraising Authorization for Use/Disclosure of Medical Information

VI. References

- 45 CFR 164.501(HIPAA Privacy Rule)
- 45 CFR 164.508(a)(3) (HIPAA Privacy Rule)

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VII. Related Policies

Policy Number 3.7 “Uses and Disclosures of Protected Health Information for Fundraising”

VIII. For Further Information

For further information concerning this policy, please contact the UW-Madison HIPAA Privacy Officer or the appropriate unit HIPAA Privacy Coordinator or sub-Coordinator. Contact information is available within the “Contact Us” tab at hipaa.wisc.edu.

Reviewed By

UW-Madison HIPAA Privacy Officer
UW-Madison Office of Legal Affairs

Approved By

Interim HIPAA Privacy and Security Operations Committee