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

Policy Number: 3.7
Policy Title: Uses an Disclosures of Protected Health Information for Fundraising
Effective Date: April 14, 2003
Last Revision Date: June 13, 2014
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I. Policy

The HIPAA Privacy Rule and HITECH regulations permit limited uses and disclosures of protected health information for fundraising activities on behalf of 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 fundraising activities and when no authorization is required for such activities.

II. Definitions

- A. Business Associate: A person or entity that performs functions or activities on behalf of, or certain services for, a covered entity 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. Demographic Information: Name, address and other contact information, age, gender, and date of birth. The term does **not** include any information about the illness or treatment.
- D. 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.
- E. Fundraising: Appeals for money, sponsorship of events, etc. Fundraising does not include royalties or remittances for the sale of products of third parties (except auctions, rummage sales, etc.).
- 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.

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- G. Institutionally Related Foundation: A foundation that qualifies as a nonprofit charitable foundation under section 501(c)(3) of the Internal Revenue Code and that has in its charter statement of charitable purposes an explicit linkage to the covered entity. The University of Wisconsin Foundation is the institutionally related fundraising foundation for the UW-Madison health care component.
- 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 Foundation (“UWF”): The Institutionally Related Foundation that performs fundraising activities for UW-Madison.
- J. Use: The sharing, employment, application, utilization, examination, or analysis of PHI by an individual within the UW HCC or the UW ACE.
- 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. All fundraising for the UW HCC that involves the use of PHI and requires patient authorization **must** be done through UWF, which is both an Institutionally Related Foundation and a Business Associate of UW-Madison.
- B. Requirements of the Privacy Rule of HIPAA and HITECH for Use and/or Disclosure of PHI for Fundraising by the UW HCC.

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1. Fundraising Requiring Patient Written Authorization. If the UW HCC desires to use or disclose any PHI of a patient other than as described below in B.2. for fundraising purposes, this may be done only after the patient has authorized this use/disclosure by completing a Marketing/Fundraising Authorization for Use/Disclosure of Medical Information form (see section IV.B. below). All such fundraising must be done in coordination with UWF. UWF will assist in obtaining the needed patient authorization for this type of fundraising and retain the authorizations as required under the HIPAA Privacy Rule.

2. Fundraising that Does Not Require Patient Written Authorization. Fundraising that does not involve the use or disclosure of PHI by the UW HCC or that involves the use or disclosure by the UW HCC of only that information described below in b. does NOT require a patient authorization.
 - a. Fundraising Not Involving the Use or Disclosure of PHI by the UW HCC. If an individual (patient, family, or friend) approaches a UW staff member and requests information about how to donate, this information may be provided and/or the donation accepted without any authorization. When individuals spontaneously donate, not in response to a fundraising solicitation, this donation is not covered by the Privacy Rule.

 - b. Fundraising Involving the Use or Disclosure of Demographic Information and Other Limited Information as Described Below to an Institutionally Related Foundation or Business Associate.
 - i. Without the patient's written authorization, the UW HCC may use internally or disclose outside of the UW HCC to an institutionally related foundation or business associate (i.e., to UWF), for fundraising on its behalf:

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- (1) Demographic information (as defined above);
 - (2) Dates of health care provided to the patient;
 - (3) Department of service (e.g., cardiology, pediatrics);
 - (4) Treating physician;
 - (5) Outcome information (including death or sub-optimal treatment);
 - (6) Health insurance status.
- ii. The relevant Notice of Privacy Practices (see Privacy Policy # 2.1 “Notice of Privacy Practices (NPP) Distribution and Acknowledgement”) must contain a statement that the UW HCC may contact the patient to raise funds for the UW HCC and describe the individual’s right to opt out of receiving communications. The actual opportunity to opt out is not required to be provided pre-solicitation.
- iii. Each fundraising communication must provide the individual with a clear and conspicuous opportunity to opt out of receiving any further fundraising communications. The method for opt out must not require the individual to incur an undue burden or more than a nominal cost.
- iv. The UW HCC may not condition treatment or payment on the individual’s choice concerning the receipt of further communications related to fundraising.
- v. The UW HCC may not make fundraising communications to an individual who has opted out of receiving such communications.

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- vi. Individuals who have opted out of receiving fundraising communications may be given the opportunity to opt back in, but only through an affirmative step to opt back in (e.g., an opt out may not lapse after a period of time).

C. Mailing Lists

The UW HCC may use PHI, including disease or condition information, without a patient authorization, to develop mailing lists for purposes of identifying individuals to whom an authorization for use of PHI for fundraising should be sent.

D. Minimum Necessary

The UW HCC must identify and use or disclose only the minimum set of PHI necessary when using or disclosing PHI for fundraising.

E. Fundraising Databases Prior to April 14, 2003

Any database in existence as of April 14, 2003, used for fundraising purposes must be purged of any health related information about the individual. Only the information described above in III.B.2.b. along with donation history may be maintained in such databases for use for fundraising purposes.

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

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VI. References

45 CFR 164.514(f) (HIPAA Privacy Rule)

VII. Related Policies

Policy Number 3.6 “Uses and Disclosures of Protected Health Information for Marketing”

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

Chancellor
Chancellor’s Task Force on HIPAA Privacy
UW-Madison HIPAA Privacy Officer
UW-Madison Office of Legal Affairs

Approved By

Interim HIPAA Privacy and Security Operations Committee