

**LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION
BATON ROUGE, LA**

POLICY NUMBER: 7515-16


CATEGORY: HIPAA Policies

CONTENT: Notice of Privacy Practices
- Notice of Privacy Practices – Attachment A
- Acknowledgement of Receipt of Notice of Privacy Practices
- Attachment B

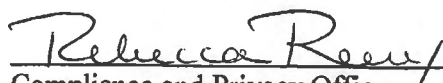
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July 24, 2013
March 23, 2015

INQUIRIES TO: **LSU HCSD
Compliance Section
Post Office Box 91308
Baton Rouge, LA 70821
Telephone: 225-354-7032**


Deputy Chief Executive Officer
LSU Health Care Services Division

3/10/2016
Date


Compliance and Privacy Officer
LSU Health Care Services Division

3/10/16
Date

**LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION**

Notice of Privacy Practices

I. SCOPE

All Louisiana State University Health Care Services Division (LSU HCSD) facilities and providers including, but not limited to the hospital, physician practices, and clinics.

II. PURPOSE

To provide guidance to LSU HCSD facilities and providers on a patient's right to adequate notice of privacy practices as required by the Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information (HIPAA Privacy Regulations), and any other applicable state or Federal laws or regulations.

III. POLICY

All LSU HCSD facilities and providers must provide an adequate Notice of Privacy Practices to patients. LSU HCSD must also inform the patients of their rights with respect to Protected Health Information and the facility's legal duties. LSU HCSD must obtain the patient's acknowledgment of receipt of the notice.

IV. DEFINITIONS:

1. **Protected Health Information** (sometimes referred to as PHI) – for purposes of this policy means individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. It includes demographic data that relates to that relates to:
 - a) The individual's past, present, or future physical or mental health or condition;
 - b) The provision of health care to the individual; or
 - c) The past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. PHI includes many

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common identifiers such as name, address, birth date, social security number, etc.

2. **Direct Treatment Relationship** – means a treatment relationship between an individual and a health care provider that is not an indirect treatment relationship.
3. **Indirect Treatment Relationship** – means a relationship between an individual and a health care provider in which: (1) the health care provider delivers health care to the individual based on the orders of another health care provider; and (2) the health care provider typically provides services or products, or reports the diagnosis or results associated with the health care, directly to another health care provider, who provides the services or products or reports to the individual.
4. **Organized Health Care Arrangement** – means in part a clinically integrated care setting in which individuals typically receive health care from more than one health care provider. An example is a hospital setting where physicians are on staff at the hospital.
5. **Privacy Officer** - person designated by Facility to be the Privacy Officer and who is responsible for the development and implementation of the patient privacy policies and procedures.
6. **Breach**– Impermissible use or disclosure of PHI and facility is unable to demonstrate that there is a low probability that the PHI has been compromised.

V. PROCEDURE:

1. Facility should provide a Notice of Privacy Practices that is written in plain language and includes the required elements or information identified in this policy.
2. In instances that Facility has a Direct Treatment Relationship with a patient, Facility must:
 - Provide the Notice of Privacy Practices to the patient no later than the date of the first service delivery after the compliance date of the HIPAA Privacy Regulations, which is April 14, 2003; In an emergency treatment situation, provide the Notice of Privacy Practices as soon as reasonably practicable after the emergency treatment situation;

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- Except in an emergency treatment situation, make a good faith effort to obtain a written acknowledgement of receipt of the Notice, and if not obtained, document the good faith efforts by Facility to obtain an acknowledgement and the reason why the acknowledgement was not obtained;
 - If Facility maintains a physical delivery site, the Facility must: (i) Have the Notice of Privacy Practices available at each location where admit/screening is performed to provide to individuals who request them; and (ii) Post the Notice of Privacy Practices in a clear and prominent location where it is reasonable to expect individuals seeking service from the facility to read the notice; and
 - Whenever the Notice of Privacy Practices is revised, make the Notice available upon request on or after the effective date of the revision and promptly post the revised Notice at their physical delivery site in a clear and prominent location.
3. Facility must make a good faith attempt to obtain a written acknowledgement of receipt of the Notice, and if not obtained, then document the effort to obtain this acknowledgement. The acknowledgement should be scanned into the EPIC system.
 4. Facility must take reasonable steps to ensure meaningful access for limited English proficient persons, including translated versions of frequently encountered languages.
5. Required Elements of the Notice
- A. The header statement must state: “THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.”
 - B. A description, including at least one example, of the types of uses and disclosures for the purposes of treatment, payment and health care operations.
 - C. A description of each of the other purposes for which the Facility is permitted or required to use or disclose the information without the individual’s written authorization.
 - D. A statement that other uses or disclosures will be made only with the individual’s written authorization and that the individual may revoke this authorization.

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- E. Separate statements that the Facility may contact its patients to provide appointment reminders or information about treatment alternatives or other health-related benefits and services, or that the Facility may contact individuals to raise funds for the Facility *if* the Facility intends to engage in these activities.
- F. A statement of the patient's rights with respect to Protected Health Information, including:
- The right to inspect and copy Protected Health Information;
 - The right to amend Protected Health Information;
 - The right to receive confidential communications;
 - The right to an accounting of disclosures;
 - The right to request restrictions on certain uses and disclosures;
 - The right to obtain a paper copy of the notice.
 - The right to be notified following a breach of unsecured PHI.
 - The right to restrict certain disclosures of PHI to payor if payment in full for items or services is made out of pocket.
 - The right to opt out of receiving communications regarding fundraising.
- G. A statement of the Facility's legal duties with respect to PHI.
- Facility is required by law to maintain the privacy of PHI and to provide this notice with respect to PHI;
 - Facility must abide by the terms of the notice;
 - Facility may apply a change to the notice and make the new notice effective for the entire PHI it maintains. The statement will also include how it will provide the revised notice to individuals.
- H. A statement that patients may complain to the Privacy Officer or the Secretary of the U.S. Department of Health and Human Services if they believe their privacy rights have been violated, a brief description of how the individual may file a complaint, and a statement that the individual will not be retaliated against for filing a complaint.
- I. A statement that includes the telephone number of the contact person.
- J. The effective date of the notice.

- K. A statement that the notice may change.
5. Any Facility that maintains a website must prominently post its notice on the website and make the notice available electronically through the website.
 6. The Facility may provide the notice by e-mail. A paper copy must be provided at the request of the patient or if the e-mail transmission fails.
 7. If the first service delivery to a patient is delivered electronically, the facility must provide the notice automatically and immediately. There must be a procedure in place to notate this electronic delivery. The individual may obtain a paper copy at his or her request.
 8. If the Facility is involved in an Organized Health Care Arrangement, then the Facility may use a joint Notice for the facility and any physicians on its medical staff. The Facility must provide the joint Notice to the patient upon the initial interaction with the patient. This joint Notice must describe the hospitals and physicians to which the joint Notice applies and must explain that Protected Health Information will be shared as necessary to carry out treatment, payment and health care operations.
 9. For recurring patients, the Notice may be provided at the initial interaction and does not need to be provided again unless a change has been made to the notice.
 10. The Facility must document compliance by retaining copies of the notices issued.
 11. The Facility may review and update the notice. Any revised notice must be distributed whenever there is a material change to the uses or disclosures, individual's rights, legal duties or other privacy practices stated in the notice.

**LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION**

LALLIE KEMP MEDICAL CENTER

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION**

THIS NOTICE DESCRIBES HOW YOUR MEDICAL INFORMATION MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

The law requires us to make sure that medical information that tells who you are is kept private. It also requires us to give you this notice of our legal duties and privacy practices to tell you what we do with the medical information about you. We must follow the duties and privacy practices described in this notice. To better understand this law, you may want to read it. It is in 45 CFR Part 164.

We have the right to change this notice and our privacy practices in the future. Any changes made will apply to all of the medical information we have about you at that time. If we make a change, we will put up a notice in our building. We will also give you a copy of the new notice if you ask for it. You can also read about these changes on the computer. We have this information on our website at <http://www.lsuhs hospitals.org/>.

WHO WILL FOLLOW THIS NOTICE

This notice describes the practices that the Hospital and other health care providers and employees affiliated with the Hospital will follow. For example, the contracted and employed medical staff and the employees in our LSU HCSD headquarters will follow the privacy practices outlined here. This includes our emergency room practitioners, radiologists, and pathologists. These individuals will share your protected health information as necessary to carry out treatment, payment, or health care operations related to the health care provided here at Lallie Kemp Medical Center.

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HOW YOUR MEDICAL INFORMATION MAY BE USED:

In general, we may *use* your medical information in the following ways:

- **To provide patient care to you.** Your medical information may be used by the doctors, nurses and other professionals who are treating you. For example, your medical information is used to help them find out your problem and to decide the best way to treat you. Also, we may use your medical information to contact you to remind you of appointments, and to give you information about other treatment options, or other health-related benefits and services that may be of interest to you. However, when communicating appointment reminders, treatment options, or other related benefits and services that the hospital receives cash or cash equivalents for, you will be asked for your authorization. The hospital typically does not receive cash or cash equivalents for such reminders.

This hospital participates in shared electronic health records systems and other patient information (“Shared Systems”) and may electronically share your health information for treatment, payment, healthcare operations, and other purposes permitted under HIPAA with other participants in the Shared Systems. The Shared Systems allows your health care providers to efficiently access and use your pertinent medical information necessary for treatment and other lawful purposes.

The disclosure of your health information to other Hospitals and health care providers may be shared electronically through our electronic health record system. The disclosure may be done electronically through a health information exchange (HIE) that allows providers involved in your care to access some of your Lallie Kemp records. Also, some selected providers may directly access and view Lallie Kemp’s electronic health record. This electronic access allows your health care services to be better coordinated. If you do not want health care providers outside of Lallie Kemp to have access to your records in this way, contact Lallie Kemp Medical Center’s Health Information Department. They will ask you to put your request in writing. You will also need to notify your other health care provider(s) of this restriction.

- **To obtain payment.** Your medical information may also be used by our business office to prepare your bill and process payments from you as well as from any insurance company, government program or other person who is responsible for payment
- **For our healthcare operations.** For example, your medical information may be used to review the quality and appropriateness of the care you receive. We may also use your

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medical information to put together information to see how we are doing and to make improvements in the services and care we give you. In addition we may have students, trainees, or other health care personnel, as well as some non health care personnel, who come to our facility to learn under our guidance to practice or improve their skills.

- **To create de-identified databases.** Sometimes your information is used for research purposes. To do so, your information may be completely de-identified or partially de-identified. If your information is partially de-identified, it is called a “limited data set.” This de-identified information may be stored in a secure data base for later research use.

HOW YOUR MEDICAL INFORMATION MAY BE DISCLOSED:

In addition to using your medical information, we may *disclose* all or part of it to certain other people. This includes giving your information to:

- **You.** In order to get copies of your medical information, you will need to fill out an authorization form. You may also have to pay for the cost of some or all of the copies. You may also use the patient portal to access your electronic health record free of charge on the internet. In order to use this internet function, you must sign up and have a secure password.
- **People You Ask Us To Give It To.** If you tell us that you want us to give your medical information to someone, we will do so. You will need to fill out an authorization form. You may stop this authorization at any time. We are not allowed to force you to give us permission to give your medical information to anyone. We cannot refuse to treat you because you stop this authorization. Other uses and disclosures not described in this Notice and not required or permitted by law will be made only with your authorization.
- **Payers.** We have the right to give your medical information to insurance companies, government programs (such as Medicare and Medicaid) and the people who process their claims as well as to others who are responsible for paying for all or part of the cost of treatment provided to you. For example, we may tell your health insurance company what is wrong with you and what treatment is recommended or has been given. Also, if your treatment is or may be covered by worker’s compensation, we may give medical information to the people who handle your worker’s compensation, the Louisiana Office of Worker’s Compensation Administration and to your employer.
- **Our “business associates.”** Business associates are companies or people that we contract

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with to do certain work for us. Examples include information to auditors, attorneys and specialized people providing management, analysis, utilization review or other similar services to us. Another example is the giving of health information to a business associate so that the business associate can create a de-identified data base. Business associates are required to agree to take reasonable steps to protect the privacy of your medical information.

- **Limited Data Set Recipients.** If we use your information to make a “limited data set,” we may give the “limited data set” that includes your information to others for the purposes of research, public health action or health care operations. The persons who receive “limited data sets” are required to agree to take reasonable steps to protect the privacy of your medical information.
- **The Secretary of the U. S. Department of Health and Human Services.** The Secretary has the right to see your records in order to make sure we follow the law.
- **Public Health Authorities.** We may disclose your medical information to a public health authority responsible for preventing or controlling disease, maintaining vital statistics or other public health functions. We may also give your medical information to the Food and Drug Administration in connection with FDA-regulated products.
- **Law Enforcement Officers.** We may reveal your medical information to the police in certain situations or as required by law. We may also give your medical information to persons whose job is to receive reports of abuse, neglect or domestic violence. And, if we believe that releasing this information is needed to prevent a serious threat to the health or safety of a person or the public, we are allowed to reveal your medical information.
- **Health Oversight Agencies.** We may give your medical information to agencies responsible for health oversight activities, such as investigations and audits, of the health care system or benefit programs, as allowed by law.
- **Courts and Administrative Agencies.** We may reveal your medical information as required by a judge for a legal issue.
- **Coroners and Funeral Directors.** We may reveal medical information about persons who have died to coroners, medical examiners and funeral directors, as allowed by law.
- **Organ Transplant Services.** We may reveal your medical information to agencies that are responsible for getting and transplanting organs.

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- **Research.** We may reveal your medical information in connection with certain research activities. With your authorization, we may disclose pertinent information such as your name, social security number, study name, and dates of participation to our Accounts Payable department to issue human research subjects reimbursement and/or compensation payments.
- **Specialized Governmental Functions.** We may disclose your medical information for certain specialized governmental functions, as allowed by law. Such functions include:
 - Military and veterans activities
 - National security and intelligence activities
 - Protective services to the President and others
 - Medical suitability determinations; and
 - Correctional institutions and other law enforcement custodial situations.
- **Required by Law.** We may also reveal your medical information in any other circumstance where the law requires us to do so.

OBJECTIONS TO USES AND DISCLOSURES:

In certain situations, you have the right to object before your medical information can be used or revealed. This does not apply if you are being treated for certain mental or behavioral problems. If you do not object after you are given the chance to do so, your medical information may be used:

- **Patient Directory.** In most cases, this means your name, room number and general information about your condition may be given to people who ask for you by name. Also, information about your religion may be given to members of the clergy, even if they do not ask for you by name.
- **Family and Friends.** We may disclose to your family members, other relatives and close personal friends, any medical information that they need to know if they are involved in caring for you. For example, we can tell someone who is assisting with your care that you need to take your medication or get a prescription refilled or give them information about how to care for you. We can also use your medical information to find a family member, a personal representative or another person responsible for your care and to notify them where you are, about your condition or of your death. If it is an emergency or you are not able to communicate, we may still give certain information to persons who can help with your care.

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- **Disaster Relief.** We may reveal your medical information to a public or private disaster relief organization assisting with an emergency.
- **Marketing and Sale of Your Information.** Lallie Kemp Medical Center does not engage in practices involving certain marketing communications and/or the sale of your protected health information. However, if it did, it would obtain your authorization first.
- **Psychotherapy Notes.** Lallie Kemp Medical Center does not provide services that would result in psychotherapy notes. But if it did, it would have to have your permission to release such notes before doing so.

YOUR RIGHTS REGARDING YOUR MEDICAL INFORMATION

You also have the following rights regarding your medical information:

- You have the right to ask us to treat your medical information in a special way, different from what we normally do. Unless you have the right to object to the use of the information, we do not have to agree with you. If we do agree to your wishes, we have to follow your wishes until we tell you that we will no longer do so.
- You have the right to tell us how you would like us to send your information to you. For example, you might want us to call you only at work or only at home. Or you may not want us to call you at all. If your request is reasonable, we must follow your request.
- You have the right to look at your medical information and, if you want, to get a copy of it. You have the right to receive the copy in an electronic or paper format. We can charge you for a copy, but only a reasonable amount. Your right to look at and copy your medical records is based upon certain rules. For example, we can ask you to make your request in writing or, if you come in person, that you do so at certain times of the day.
- You have the right to ask us to change your medical information. For example, if you think we made a mistake in writing down what you said about when you began to feel bad, you can tell us. If we do not agree to change your record, we will tell you why, in writing, and give you information about your rights.
- You have the right to be told to whom we have given your medical information in the six

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years before you make your request. This does not apply to all disclosures. For example, if we gave someone your medical information so that they could treat you or pay for your care, we do not have to keep a record of that.

- You have the right to receive notifications of breaches of your medical information.
- You have a right to restrict disclosures of your medical information to your payor if you wish to pay out of pocket in full for items or services provided to you.
- You have the right to choose someone to act on your behalf. If you have given someone medical power of attorney or if someone is your legal guardian, that person can exercise your rights and make choices about your health information. We will make sure the person has this authority and can act for you before we take any action.
- You have the right to opt out of receiving communications regarding fundraising.
- You have the right to get a copy of this notice at no charge.
- You have the right to complain to us or to the United States Department of Health and Human Services if you believe that we have violated your privacy rights. To complain to us, please contact our Patient Advocate at 985-878-1259 or by writing to us at 52579 Highway 51 South, Independence, LA. 70443. If you choose to file a complaint, you will not be penalized in any way.

If you would like further information about your rights or about the uses and disclosures of your medical information, you may contact our Compliance/Privacy Office at 1-800-735-1185 or by writing to LSU HCSD, Compliance/Privacy Office, P.O. Box 91308, Baton Rouge, LA 70821.

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Acknowledgement of Receipt of Notice of Privacy Practices

I, _____, acknowledge that I have received a copy of the
(Patient's name – please print)

Notice of Privacy Practices of [Name of Entity] this date.

Patient's Signature

Date: _____

**Health Care Provider's Documentation of
Good Faith Effort to Obtain Acknowledgement of Receipt**

If the Acknowledgement could not be obtained prior to the date of first service to the patient, or, in an emergency situation, as soon as reasonably practicable after the emergency has resolved, describe below the efforts made to obtain the written Acknowledgement and the reasons why the written Acknowledgement could not be obtained. If the patient refused to provide the written Acknowledgement, please so state.

Efforts to obtain written Acknowledgement:

Reasons written Acknowledgement could not be obtained:

(Signature of health care provider)

Date

(Printed name of health care provider)

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**LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION
BATON ROUGE, LA**

POLICY NUMBER: 7517-16

CATEGORY: HIPAA Policies

CONTENT: Use and Disclosure of Protected Health Information for Marketing Purposes
- **Authorization for Use and Disclosure of Protected Health Information for Marketing Purposes - Attachment A**

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INQUIRIES TO: **LSU HCSD
Compliance Section
Post Office Box 91308
Baton Rouge, LA 70821
225-354-7032**

Deputy Chief Executive Officer
LSU Health Care Services Division

Date

Compliance and Privacy Officer
LSU Health Care Services Division

Date

**LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION
BATON ROUGE, LA**

Use and Disclosure of Protected Health Information for Marketing Purposes

I. SCOPE

This policy is applicable to all workforce members of the LSU Health Care Services Division facilities, including employees, physician/practitioner practices, vendors, agencies, business associates and affiliates.

II. PURPOSE

To provide guidance to the health care facilities and providers affiliated with the LSU HCSD on the requirements of the Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information (HIPAA Privacy Regulations) for using or disclosing an individual's Protected Health Information for marketing purposes.

III. POLICY

All LSU HCSD facilities and providers must obtain an individual's signed authorization before using or disclosing the individual's Protected Health Information for marketing purposes as defined in this policy.

All LSU HCSD facilities and providers are referred to in this policy as "Facility or Clinic."

IV. Definitions

1. **Protected Health Information (sometimes referred to as "PHI")** – for purposes of this policy means individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. It includes demographic data that relates to that relates to:
 - a) The individual's past, present, or future physical or mental health or condition;
 - b) The provision of health care to the individual; or
 - c) The past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. PHI includes many common identifiers such as name, address, birth date, social security number, etc.

2. **Authorization** – A written document completed and signed by the individual that allows use and disclosure of PHI for purposes **other than treatment, payment or health care**

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operations.

3. Designated Record Set – is a group of records maintained by or for Facilities and Clinics that is:

- The medical records and billing records about individuals maintained by or for Facilities and Clinics ; or
- Any records used, in whole or part, by or for the Facilities and Clinics to make decisions about individuals.
- Any record that meets this definition of Designated Record Set and which are held by a HIPAA Business Associate of Facilities and Clinics are part of Facilities and Clinics' Designated Record Set.
 - The term *record means* any item, collection, or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for Facilities and Clinics.
 - The term *record* also includes patient information originated by another health care provider and used by Facilities and Clinics to make decisions about a patient.
 - The term *record* includes tracings, photographs, and videotapes, digital and other images that may be recorded to document care of the patient.

4. Psychotherapy Notes – means notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual's record. Psychotherapy notes does not include: medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

5. Marketing – Except as provided below, 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.

Marketing does not include a communication made in the following circumstances.

- a. To provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual, only if any financial remuneration received by the facility in exchange for making the communication is reasonably related to the facility's cost of making the communication.
- b. For the following treatment and health care operations purposes, except where the facility receives financial remuneration in exchange for making the communication
 - i. 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;
- ii. To describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the facility making the communication, including communications about
 - The facility's participation in a health care provider network or health plan network;
 - Replacement of or enhancements to a health plan;
 - Health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits.
 - iii. 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.

6. Financial Remuneration – means 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.

V. Procedure

Authorization Required for Use & Disclosure of PHI for Marketing

1. The facility must obtain a patient's or personal representative's prior authorization for any use and disclosure of PHI for marketing purposes except as specified in the sections below, Authorization Not Required for Use & Disclosure of PHI for Marketing Communications and Clarifications Related to Financial Remuneration. An authorization must be specific as to the use and disclosure being requested and is not to be written in such a manner that it might be interpreted as a blanket authorization for the use and disclosure of PHI for marketing. A blanket marketing authorization is invalid.
2. To be valid, an authorization must include:
 - a. All of the core elements and required statements as detailed in the HIPAA Authorization Policy (7501)
 - b. If the marketing involves direct or indirect remuneration to the facility from a third party, the authorization must also state that such remuneration is involved.
 - c. The authorization must make it clear that the individual may revoke the authorization at any time he/she wishes to stop receiving the marketing material.

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3. For further guidance on authorizations, see HIPAA Authorization policy (7501) for information on:
 - a. The steps for responding to and processing of authorizations for use and disclosure of PHI;
 - b. The patient's right to revoke an authorization;
 - c. Authorization and revocation documentation and retention requirements;
 - d. The prohibition on conditioning of authorizations; and
 - e. Other requirements related to authorizations for use and disclosure of PHI.

4. Business Associates – The facility may not disclose PHI to third parties for marketing purposes without authorization from the patient, even if the third party is acting as the business associate of the facility.

Authorization Not Required for Use & Disclosure of PHI for Marketing Communications

1. The facility may use or disclose PHI for marketing without an authorization only if the communication is made in the form of:
 - a. A face-to-face communication made by a covered entity to a patient or personal representative; or
 - b. A promotional gift of nominal value provided by the facility.
 - c. Exceptions provided for in the definition of “marketing”.
 - d. Communications promoting health in general and that do not promote a product or service from a particular provider.
 - e. Communications about government and government-sponsored programs. The facility may communicate with individuals about eligibility for programs, such as Medicare and Medicaid, or State Children's Health Insurance Program, without obtaining individual authorization.

Clarifications Related to Financial Remuneration

1. Direct payment means financial remuneration that flows from the third party (whose product or service is being described/marketed) directly to the facility.
2. Indirect payment means financial remuneration that flows from an entity on behalf of the third party (whose product or service is being described/marketed to the facility).

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3. Where a Business Associate (including a subcontractor), as opposed to the facility itself, receives financial remuneration from a third party in exchange for making a communication about a product or service, such communication also requires prior authorization from the individual.
4. Financial remuneration does not include non-financial benefits, such as in-kind benefits, provided to a facility in exchange for making a communication about a product or service. Financial remuneration only includes actual financial payments made in exchange for making such communications.
5. For a financial remuneration to be a consideration for this rule, the payment has to be for a communication that encourages individuals to purchase or use the third party's product or service. If the financial remuneration is for any purpose other than for making the communication, then this marketing provision does not apply. For example, if a third party provides financial remuneration to a facility to implement a disease management program, the facility could provide individuals with communications about the program without obtaining individual authorization as long as the communications are about the facility's disease management program.

Responsibilities

1. The facility Privacy Officer is responsible for evaluating certain types of communications to patients and determining whether the communication meets the definition of "marketing" and therefore requires obtaining the patient's or personal representative's authorization for the marketing communication or purpose.

Note: Many communications with patients are for purposes other than marketing and it is not intended that this review process introduce any obstacles or hardships as it relates to treatment of the patient or access of the patient to quality health care.

2. The facility HIM Director or designee is responsible for obtaining authorizations from patients for use and disclosure of PHI for marketing purposes.
3. The facility Privacy Officer, is responsible for determining whether a "promotional gift is of nominal value".
4. The facility must obtain business associate contracts with any business associates involved in the production, distribution, or processing of marketing communications if patient PHI is used.

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Special Considerations

1. Facility's Own Uses - The facility may use PHI to communicate with individuals about the facility's own health-related products or services, the patient's treatment, or case management or care coordination for the individual, and may make the communication itself or use a business associate to do so.
2. Notice of Privacy Practices – The facility Notice of Privacy Practices must contain a statement indicating that disclosures of protected health information for marketing purposes, and disclosures that constitute a sale of protected health information require individual authorization.
3. PHI is Not for Sale - Patient medical information should not be a commodity in the marketplace, and should not be made available for purchase or sale by any patient or entity.
4. Communications Promoting Health – A communication that merely promotes health in a general manner and does not promote a specific product or service from a particular provider does not meet the general definition of “marketing.” Such communications may include population-based activities to improve health or reduce health care costs as set forth in the definition of “health care operations”. Therefore, communications such as mailings reminding women to get an annual mammogram, providing information about how to lower cholesterol, advising of new developments in health care, health or ‘wellness’ classes, support groups, and health fairs, are permitted, and are not considered marketing.
5. Newsletters – The facility may make communications in newsletter format without authorization so long as the content of such communication is not “marketing” as defined for purposes of HIPAA.

REFERENCES:

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Attachment A: Authorization for Use and Disclosure of Protected Health Information for Marketing Purposes

Patient Identification

Printed Name: _____ Date of Birth: _____

Address: _____

Social Security #: _____ Telephone: _____

Information To Be Released – Covering the Periods of Health Care

From (date) _____ to (date) _____

Please check type of information to be released:

Purpose of Request

▪ Marketing purposes as described here: _____

Payments to Facility

This marketing activity involves direct or indirect compensation/payment from a third party to *Name of Facility* for this use of protected health information. **Check One:** Yes No _____ Initials

Person Authorized to Receive Information

Name: _____

Address: _____

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Drug and/or Alcohol Abuse, and/or Psychiatric, and/or HIV/AIDS Records Release

I understand that if my medical or billing record contains information in reference to drug and/or alcohol abuse, psychiatric care, sexually transmitted disease, Hepatitis B or C testing, and/or other sensitive information, I agree to its release. **Check One:** Yes No _____ Initials

I understand that if my medical or billing record contains information in reference to HIV/AIDS (Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome) testing and/or treatment, I agree to its release. **Check One:** Yes No _____ Initials

Time Limit & Right to Revoke Authorization

Except to the extent that action has already been taken in reliance on this authorization, at any time I can revoke this authorization by submitting a notice in writing to the facility Health Information Manager at *[location & mailing address]*. I understand that I can revoke this authorization at any time, and this revocation means that I will not receive any additional marketing materials from *(name of Hospital)*. Unless revoked, this authorization will expire on the following date or event _____. If no expiration date is set forth this authorization will expire 180 days from date of signature.

Re-disclosure

I understand the information disclosed by this authorization may be subject to re-disclosure by the recipient and no longer be protected by the Health Insurance Portability and Accountability Act of 1996. The facility, its employees, officers and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized herein.

Signature of Patient or Personal Representative Who May Request Disclosure

I understand that *[Name of Facility]* may not condition my treatment on whether I sign this authorization form unless specified above under Purpose of Request. I can inspect or copy the protected health information to be used or disclosed. I authorize _____ to use and disclose the

(Name of Facility or Provider)

protected health information specified above.

Signature: _____ Date: _____

Authority to Sign if not patient:

Identity of Requestor Verified via: Photo ID Matching Signature Other, specify

Verified by: _____