LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION
BATON ROUGE, LA

POLICY NUMBER:	7518-25
CATEGORY:	HIPAA Policies
CONTENT:	Use and Disclosure of Protected Health Information for Fundraising
APPLICABILITY:	This policy is applicable to the Health Care Services Division Administration and Lallie Kemp Medical Center, to include employees, physician/practitioner practices, vendors, agencies, business associates, and affiliates.

EFFECTIVE DATE:

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INQUIRIES TO:

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Note: Approval signatures/titles are on the last page

LSU HEALTH CARE SERVICES DIVISION
USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR FUNDRAISING

I. POLICY STATEMENT

This policy will provide guidance to the health care facilities and providers affiliated with the LSU Health Care Services Division (HCSD) on the use or disclosure of an individual's Protected Health Information (PHI) for fundraising purposes. HCSD facilities and providers are referred to in this policy as "Facility or Clinic."

Note: The notice and opt out requirements reviewed in this policy regarding fundraising communications apply only where the Facility or Clinic is using or disclosing PHI to target the fundraising communication. If the Facility or Clinic does not use PHI information to send fundraising materials, then the notice and opt out requirements do not apply. For example, if a Facility or Clinic uses a public directory to mail fundraising communications to all residents in a particular geographic area, the notice and opt out requirements are not applicable.

Note: Any reference to HCSD also applies and pertains to Lallie Kemp Medical Center.

II. IMPLEMENTATION

This policy and subsequent revisions to the policy shall become effective upon approval and signature of the HCSD Chief Executive Officer (CEO) or designee.

III. DEFINITIONS

A. **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:

1. The individual's past, present, or future physical or mental health or condition;
2. The provision of health care to the individual; or
3. 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.

B. **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 operations.

C. **Designated Record Set –** is a group of records maintained by or for a Facility or Clinic that is:

1. The medical records and billing records about individuals maintained by or for a Facility or Clinics
2. Any records used, in whole or part, by or for the Facility or Clinic to make decisions about individuals; or
3. Any record that meets this definition of Designated Record Set and which are held by a HIPAA Business Associate of a Facility or Clinics are part of a Facility's or Clinic's 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 the Facility or Clinic.
   - The term *record* also includes patient information originated by another health care provider and used by the Facility or Clinic 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.

D. **Fundraising –** A communication to an individual that is made by the Facility or Clinic, an institutionally related foundation, or a business associate on behalf of the Facility or Clinic, for the purpose of raising funds for the Facility or Clinic. The communication may be in a variety of forms, including phone contact, mailing, and emailing. No matter the format of the communication, it must be clear to the individual that he or she may opt out of further solicitations.

IV. PROCEDURE

A. The Facility or Clinic may use, or disclose to a business associate or to an institutionally related foundation, without a signed authorization from an individual the following PHI for the purpose of raising of funds for its own benefit: (1) Demographic information relating to an individual; (2) Dates of health care provided to an individual; (3) Department of service; (4) Treating physician; and (5) Outcome information.

1. Demographic information includes names, addresses, other contact information, age, gender, and date of birth. Insurance status is also included in this class of information.
2. Department of service information includes general information about the general department of treatment, such as cardiology, oncology, or pediatrics.

3. Outcome information includes information regarding the death of the patient or any sub-optimal result of treatment or service so that such patients may be screened and eliminated from fundraising solicitations.
4. **NOTE:** The Facility or Clinic must apply the minimum necessary standard to ensure that only the minimum amount of PHI necessary to accomplish the intended purpose is used or disclosed.

B. The Facility or Clinic must have a business associate contract in place before disclosing patient information to a consultant or outside entity for fundraising purposes.

- To use or disclose other PHI related to an individual besides the categories included in V.1 above, the facility or clinic must obtain the patient or personal representative's authorization to use such information for fundraising purposes. Examples of such information include but are not limited to: a patient's illness, diagnosis, or treatment; or
- To use or disclose other non-demographic information for fundraising purposes.

See **[HIPAA Policy on Authorization (7501)]**.

C. The Facility or Clinic may filter patient names for targeted or other fundraising purposes based upon the demographic information.

D. The Notice of Privacy Practices of the Facility or Clinic must contain a statement that the individual has a right to opt out of receiving fundraising communications.

<u>Request to Opt Out of Receiving Further Communications</u>

1. The method for an individual to elect not to receive further fundraising communications should not cause the individual to incur an undue burden or more than a nominal cost.
   a. Requiring individuals to write and send a letter to the Facility or Clinic is considered an undue burden and not permitted under the Rule.
   b. The Facility or Clinic may have an individual return a pre-printed, pre-paid postcard to opt out of fundraising communications.
   c. Other options such as the use of a toll-free phone number, an email address, or similar opt-out methods that are simple, quick, and inexpensive may also be considered by the Facility or Clinic as methods for the individual to communicate the desire to opt out of fundraising communications.

2. The fundraising communications of a Facility or Clinic must include a statement describing how the patient can opt out of receiving future fundraising communications and stating that the Facility or Clinic will take reasonable efforts to ensure the patient does not receive future fundraising communications.

3. The Facility or Clinic may continue to send information about educational and other events to a patient who has opted out from receiving fundraising communications.

4. Newsletters and other types of communications concerning Facility or Clinic events may include active or passive fundraising. These types of communications sent out to broad sections of patients or general audiences do not require an 'opt out' clause.

5. The Facility or Clinic may choose to have the patient consider opting out of a campaign *specific* fundraising communication, or *all* future fundraising communications. Whichever option is chosen, the Facility or Clinic must have data management systems and processes in place to timely track and flag those individuals who have opted out of receiving fundraising communications to ensure that the Facility or Clinic is not sending additional fundraising communications.

6. The opt out communication should clearly inform individuals of their options and any consequences of electing to opt out of further fundraising communications. Under no circumstances may one of the consequences be that treatment or payment be dependent on allowing fundraising communications.

Ability to Opt Back In to Fundraising Communications

The Facility or Clinic has the discretion to determine how individuals should be able to opt back into fundraising communications. For example, the Facility or Clinic could provide a phone number that individuals could call to be put on a fundraising list.

V. RESPONSIBILITIES

A. The Privacy Officer is responsible for reviewing and approving all fundraising communications using PHI.

B. The Administrative Office or designee is responsible for receiving and processing patient requests to opt out of receiving further fundraising communications.

C. The Contracts, Purchasing, or Administrative Office, with input from the Privacy Officer and Contracts Personnel, are responsible for obtaining business associate contracts with any business associates involved in the production, distribution, or processing of fundraising communications.

VI. EXCEPTION

The HCSD CEO or designee may waive, suspend, change, or otherwise deviate from any provision of this policy deemed necessary to meet the needs of the agency as long as it does not violate the intent of this policy, state and/or federal laws, Civil Service Rules and Regulations, LSU Policies/Memoranda, or any other governing body regulations.

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