

CS 22 UNIVERSITY OF PITTSBURGH POLICY (formerly 07-02-07)

CATEGORY: PERSONNEL
SECTION: Confidentiality of Medicine Information
SUBJECT: Use & Disclosure of Protected Health Information (PHI) for Fundraising and Marketing
EFFECTIVE DATE: Revised September 23, 2013
PAGE(S): 4

I. POLICY

It is the policy of the University and its Covered Components as defined and designated in Policy 07-02-01 to comply with the Health Insurance Portability and Accountability Act rule, as revised by the 2013 Omnibus Rule, as well as the privacy requirements that are contained within the American Recovery and Reinvestment Act of 2009 (ARRA) and any applicable related state laws that are not preempted by HIPAA.

II. PURPOSE/SCOPE

This policy identifies the requirements for adhering to the HIPAA and ARRA privacy regulations regarding a patient's/individual's (Individual) right to request restrictions to be placed on the Individual's record, the "minimum necessary" rule, and uses and disclosures of PHI for the purposes of fundraising and marketing.

III. DEFINITIONS

CFR refers to the Code of Federal Regulations.

Fundraising generally means the organized activity of requesting charitable gifts in support of research, education, training or other aspects of the advancement of health care delivery.

Business Associate refers to an individual or organization that is not a member of the University workforce and that acts on behalf of the University to assist in performing functions that involve the use or disclosure of PHI. These functions may include providing legal, accounting, consulting, management, administrative, accreditation or financial services.

Marketing means (1) to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service, unless the communication is made (a) 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 University, including communications about: the entities participating in a health care provider network or health plan network; replacement of, or enhancement of, or enhancements to, a health plan; and 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; (b) for treatment of the Individual; or (c) for 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; (2) an arrangement between the University and another entity whereby the University discloses PHI to the other entity in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service.

Protected Health Information (PHI) means information collected from an Individual that is (1) created or received by the University, (2) relates to the past, present or future physical or mental health or condition of an Individual, (3) relates to the provision of health care to an Individual or to the past, present or future payment for providing health care to the Individual and (4) that identifies or could identify the Individual. PHI includes clinical and demographic information.

University Foundation means 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 University.

IV. REQUIREMENTS

A. MINIMUM NECESSARY STANDARD FOR THE USE & DISCLOSURE OF PHI.

1. The University shall limit access and use of PHI to only those persons or classes of persons, as appropriate, who need such access to carry out or perform their job responsibilities.
2. The University shall identify the category or categories of PHI which these individuals need access to along with any conditions appropriate to such access.
3. All disclosures of PHI shall be limited to the amount reasonably necessary to achieve the purpose of the disclosure.
4. *Minimum necessary does not apply.* This requirement does not apply to:
 - (a) Disclosures to or requests by a health care provider for treatment;
 - (b) Uses or disclosures made to the Individual, as permitted under paragraph (a)(1)(i) or as required by paragraph (a)(2)(i) of 164.502;
 - (c) Uses or disclosures made pursuant to an authorization under 164.508;
 - (d) Disclosures made to the Secretary in accordance with subpart C of 45 CFR 160;
 - (e) Uses or disclosures that are required by law, as described by § 164.512(a); and
 - (f) Uses or disclosures that are required for compliance with applicable requirements of HIPAA.
5. The University shall be entitled to rely (if reasonable under the circumstances) on a requested disclosure as the minimum necessary for the stated purpose when:
 - (a) making permitted disclosures to public officials if such official represents that the information requested is the minimum necessary;
 - (b) the information is requested by another "Covered Entity" (as defined in the privacy regulations at 45 CFR § 160.103);
 - (c) the information is requested by a professional or a University Business Associate for the purpose of providing professional services to the University, provided they represent the information being requested is the minimum necessary; or
 - (d) representations that comply with the requirements of § 45 CFR § 164.512 (l) have been provided by a person requesting the information for research purposes.

6. The University shall only request information that is reasonably necessary to accomplish the purpose of the request.
7. The University shall use reasonably necessary efforts to secure and maintain the confidentiality of PHI, regardless of form or media.

B. USE & DISCLOSURE OF PHI FOR FUNDRAISING

1. The University may use or disclose to a Business Associate or a University Foundation the following PHI for the purpose of raising funds to benefit the University, without an authorization and provided the University Notice of Privacy Practices contains a statement that the University may contact the Individual to raise funds for the University:
 - (a) demographic information that can include, but not be limited to, name, address, other contact information (e.g., phone numbers, emails), age, race, gender and date of birth;
 - (b) dates that health care was provided to an Individual;
 - (c) general department of service information (e.g., Student Health Service, School of Dental Medicine);
 - (d) treating physician;
 - (e) outcome information (e.g., Individual deceased or had a bad outcome); and
 - (f) health insurance status.
2. All fundraising communications made to an Individual (including those made verbally) must contain clear and conspicuous instructions for how the Individual can opt-out of receiving such communications in the future. The method for an Individual to elect not to receive further fundraising communications may not cause the Individual to incur an undue burden or more than a nominal cost. Requiring Individuals to write a letter to opt out is considered an undue burden and is therefore not acceptable. Examples of acceptable opt-out methods include (1) a toll-free or local telephone number, (2) an email address, (3) a pre-printed, pre-paid postcard and (4) other similar simple, quick and inexpensive opt-out mechanisms. The following language is "sample" opt-out language:

If you do not want to receive future fundraising requests supporting [the University or Name of Specific Campaign], you can call _____ and communicate to us that you do not want to receive fundraising requests. There is no requirement that you agree to accept fundraising communications from us, and we will honor your request not to receive fundraising communications from us after the date we receive your notice.
3. In the event that an Individual does opt-out of receiving information related to fundraising, the opt-out request must be recorded by the respective University development area and the Individual shall not receive future fundraising communications from the respective entity.
4. An opt-out decision does not lapse. For example, if an Individual opts-out but then makes a donation, that donation does not serve (absent a separate election to opt back in), to automatically add the Individual back into the mailing list for fundraising communications.

5. The University may not condition treatment, payment or benefits on whether an Individual has elected to receive fundraising communications.
6. If there are questions on whether a particular scenario related to fundraising requires authorization or not, the respective entity's Development department and/or the Privacy Officer and/or the Office of General Counsel should be contacted.

C. USE & DISCLOSURE OF PHI FOR MARKETING

1. The University must have an Individual's prior written marketing authorization to use or disclose PHI for marketing communications. Exceptions to this include:
 - (a) When the communication occurs during a face to face encounter between the University and the Individual.
 - (b) The communication involves a promotional gift of nominal value provided by the University.

V. RESPONSIBILITY

It shall be the responsibility of each University Covered Component and, with respect to fundraising, of each University Foundation, to implement processes and procedures to meet the requirements set forth in this policy based on the Component's or Foundation's unique systems and processes.

VI. NON-COMPLIANCE

An employee's failure to abide by this policy may result in disciplinary action up to and including termination of employment.