

USE OF PROTECTED HEALTH INFORMATION (“PHI”) FOR MARKETING PURPOSES

PURPOSE

The purpose of this policy is to establish guidelines for the release of Protected Health Information (“PHI”) for marketing purposes that ensures the privacy of patients as required by the federal Health Insurance Portability and Accountability Act of 1996 (the “Privacy Rule”) and California law.

This policy applies to the UCLA Health System and David Geffen School of Medicine at UCLA (hereafter referred to as “UCLA Health”).

DEFINITIONS

“Protected Health Information” or “PHI” is any individually identifiable health information, in any format, including verbal communications, regarding a patient created as a consequence of the provision of health care. “Individually identifiable” means that the health or medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient’s name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual’s identity. PHI includes patient billing and health insurance information and applies to a patient’s past, current or future physical or mental health or treatment.

“Electronic Protected Health Information” or “ePHI” is PHI that is transmitted by electronic media or is maintained in electronic media. For example, ePHI includes all data that may be transmitted over the Internet, or stored on a computer, a CD, a disk, magnetic tape or other media.

“Personal Information (PI)” as used in this policy is an individual’s first name or first initial and last name combined with any one of the following:

- (1) social security number,
- (2) driver’s license number or California identification card number,

- (3) account number, credit, or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account,
- (4) medical information, or
- (5) health insurance information.

“**Medical information**” means any information, in either electronic or physical form, regarding an individual’s medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional, and which may be in the possession of or derived from a health care provider, health care service plan, pharmaceutical company or contractor. “Health insurance information” means an individual’s health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual’s application and claims history, including any appeals records. Medical information and health insurance information for patients are also considered to be PHI.

“**Restricted Information**” (as defined by UC Policy IS-3, Electronic Information Security) describes any confidential or Personal Information that is protected by law or policy and that requires the highest level of access control and security protection, whether in storage or in transit. This includes Personal Information, PHI and ePHI as defined in this section but could also include other types of information such as research data.

“**Workforce**” means employees, volunteers, and other persons whose conduct, in the performance of their work for UCLA Health, is under the direct control of UCLA Health or the Regents of the University of California, whether or not UCLA Health pays them. The Workforce includes employees, medical staff, and other health care professionals, agency, temporary and registry personnel, and trainees, house staff, students and interns, regardless of whether they are UCLA trainees or rotating through UCLA Health facilities from another institution.

“**Marketing**” (1) is a communication about a product or service that encourages a recipient of the communication to purchase or use the product or service or (2) is an arrangement between a covered entity and any other entity whereby (a) the covered entity sells or otherwise receives indirect or direct remuneration for disclosing PHI to the other entity; and (b) the other entity or its affiliate(s) uses the PHI to make communication about its own product or service that encourages recipients to purchase or use that product or service.

POLICY

Except as otherwise permitted in this policy, UCLA Health System and/or its providers must obtain a written authorization from a patient before they may use or disclose the patient’s PHI for marketing purposes. This requirement applies to all members of the UCLA Health System workforce and outside entities that carry out marketing activities and functions on the behalf of UCLA Health System and/or its providers.

In addition, when UCLA Health System contracts with business associates/consultants to carry out marketing activities on the behalf of UCLA Health System, those entities must enter into a business associate agreement (see: Privacy Policy and Procedure No. 9430, “*Business Associate Amendments*”), pursuant to which they agree to comply with the patient privacy and information security requirements required by law.

PROCEDURE

I. Use or Disclosure of PHI for Marketing Purposes

A. Written Authorization Generally Required.

In general, PHI may not be disclosed for marketing purposes without the patient’s written authorization. PHI includes Demographic Information, without any accompanying diagnosis or treatment information; so a written authorization must be obtained from the patient even to use the patient’s address or phone number for marketing.

The requirements for a valid written authorization are discussed in Privacy Policy and Procedure No. 9412, “*Authorization to Disclose Protected Health Information (“PHI”)*” and must include, among other things, the name or other specific identification of the persons, or class of persons, to whom UCLA Health System may make the requested use or disclosure. A valid written authorization for marketing must state whether marketing involves direct or indirect payment to UCLA Health System from a third party. A blanket authorization for marketing is not permitted.

All valid authorizations signed by the patient for marketing purposes should be forwarded to the Health Information Management Services Department for scanning into the patient’s electronic medical record.

B. Exceptions to Written Authorization Requirement

The following communications are considered to be marketing but do not require patient written authorization:

- i. A face-to-face communication made by UCLA Health System to an individual (a face-to face encounter does not include, however, a communication by telephone, mail, fax or the internet); or
 - ii. A promotional gift of nominal value provided by UCLA Health System (such as free infant formula samples).
- C. Activities Must Comply with Other Laws and University Policies.

UCLA Health System physicians and staff must be mindful that communications to an individual to recommend, purchase or use a product or service as part of the individual’s treatment, case management or care coordination could be considered a violation of other statutes or regulations administered by the Department of Health and Human Services, the Department of Justice or other federal agencies if the provider uses his or her relationship with the individual to systematically market the goods and products of third parties.

In addition, University policy prohibits the endorsement of commercial products by the University and its employees.

II. What is Not Marketing – Health Care Communications

The following health care communications do not qualify as marketing provided that UCLA Health System does not receive direct or indirect payment for making the communication:

- A. Communications for treatment of the individual.
- B. Communications 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 individuals.
- C. Communications to describe a health-related product or service (or payment for such product or service) that are provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about: the entities participating in a health care provider network or health plan network; replacement 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.

Below are examples of communications which would not be considered marketing for purposes of this policy:

- i. Health education or wellness classes, support groups, health fairs;
- ii. Mailings reminding women to get an annual mammogram;
- iii. Communications about government and government-sponsored programs — e.g., Medicare supplemental payments and SCHIP;
- iv. Newsletters, so long as the content does not meet the definition of marketing; and
- v. Population-based activities to improve health or reduce health care costs.

However, in those cases where UCLA Health System does receive direct or indirect payment for health care communication, the communication will still not be considered marketing if one of the following scenarios applies:

- i. The communication only describes a drug or biologic that has been previously prescribed to the individual, and the payment is determined to be reasonable;
- ii. The communication is made by a business associate pursuant to a business associate agreement, and the communication does not involve the use of PHI to promote an activity or product of the business associate or another third party; or
- iii. UCLA Health System makes the communication only after obtaining a valid written authorization from the individual who will receive the communication.

III. Methods of Communication

When sending a patient a communication that includes protected health information, whether or not for marketing purposes as defined above, UCLA Health System shall send the communication in a manner that protects the patient’s privacy. Approved communication methods include, but are not limited to, folded postcards, sealed envelopes, and secured electronic transmission.

IV. Requests for Limitations on Use of PHI for Healthcare Communications

An individual may request or negotiate limits on the uses and disclosures of PHI for those healthcare communications that are not marketing. All requests for restrictions should be forwarded to the Privacy Office for review. No restrictions should be agreed to without approval from the Privacy Office.. (See: Privacy Policy and Procedure No. 9414, *“Requests for Special Restriction on the Use or Disclosure of Protected Health Information.”*)

V. Questions

Questions regarding the appropriateness of a particular marketing communication should be directed to UCLA Health System’s Director of Marketing or the Privacy Office.

REFERENCES

Health Insurance Portability and Accountability Act, 45 CFR 160-164
California Medical Information Act, California Civil Code Section 56 *et seq.*
Information Practices Act of 1977, California Civil Code Sections 1798.29 and 1798.82
California Health and Safety Code Sections 1280.15 and 130203
California Lanterman-Petris Short Act (“LPS Act”),
University of California – HIPAA Uses and Disclosures for Marketing Policy

CONTACT

Chief Privacy Officer, Compliance Office
Chief Information Security Officer, Compliance Office

REVISION HISTORY

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APPROVAL

Health Sciences Enterprise Compliance Oversight Board

Approved 12/11/2010

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U C L A Healthcare**HIPAA MARKETING AUTHORIZATION**

I authorize UCLA Health System to release my protected health information to (specify the name (s), or other identify of the person(s) or class or group of person(s)):

 Street Address (If applicable) City, State, Zip Code (If Applicable) Phone Number (If Applicable)

PLEASE SPECIFY THE PROTECTED HEALTH INFORMATION YOU AUTHORIZE TO BE RELEASED:

Type (s) of health information:

 Date (s) of treatment:

 The following information will not be released unless you specifically authorize it by initialing the relevant line(s) below:

_____ I specifically authorize the release of information pertaining to drug and alcohol abuse, diagnosis or treatment (42 C.F.R. §§2.34 and 2.35).

_____ I specifically authorize the release of information pertaining to mental health diagnosis or treatment (Welfare & Institutions Code §§ 5328, et seq.)

_____ I specifically authorize the release of HIV/AIDS test results (Health and Safety Code §120980(g)).

_____ I specifically authorize the release of genetic testing information (Health and Safety Code §124980(j)).

THE PURPOSE OF THE RELEASE OF YOUR PROTECTED HEALTH INFORMATION IS FOR (check one or more):

Marketing activities that provide your health information to outside third parties, businesses or companies (see name above) so that they can contact you to sell or promote a product. I understand that UCLA Health System

_____ will receive remuneration for this marketing activity _____ will not receive remuneration for this marketing activity.

Other(specify) _____

NOTICE: UCLA Health System and many other organizations and individuals such as physicians, hospitals and health plans are required by law to keep your health information confidential. If you have authorized the disclosure of your health information to someone who is not legally required to keep it confidential, it may be subject to redisclosure and may no longer be protected by state or federal confidentiality laws. This Authorization to release health information is voluntary. You are not required to sign this authorization in order to receive treatment, for payment of your care, or for enrollment in a health plan or eligibility for benefits.

This Authorization may be revoked at any time. The revocation must be in writing, signed by you or your patient representative, and delivered to: _____ . The revocation will

take effect when UCLA Health System receives it, except to the extent UCLA Health System or others have already relied on it. You are entitled to receive a copy of this Authorization. Unless otherwise revoked, this Authorization expires on _____. If no date is indicated, the Authorization will expire 5 years after the date of your signing this form.

Print Name

Signature (Patient, Parent, Guardian)

Date/Time

Relationship to Patient (Parent, Guardian,
Conservator, Patient Representative)

Witness (if patient unable to sign)
or Interpreter

Phone Number

Mailing Address: _____