

Office of Compliance Programs

PRIVACY POLICY AND PROCEDURES

LSU Health Sciences Center New Orleans

Date Effective: April 14, 2003

Policy #: 2100.18

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Patient Information Policy

Use or Disclosure of Protected Health Information for Marketing Purposes

SCOPE:

All Louisiana State University (LSU) System health care facilities and providers including, but not limited to hospitals, physician practices, clinics, schools, etc. on the LSU Health Sciences Center New Orleans Academic Campus.

Nota Bene: All LSU System health care facilities and providers including, but not limited to hospitals, physician clinics, schools, etc. on the LSU Health Sciences Center New Orleans Academic Campus, are referred to in this policy as LSUHSC-NO.

PURPOSE:

To provide guidance to the health care facilities and providers affiliated with the LSU System 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.

POLICY:

All LSU System health care 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.

DEFINITIONS:

Protected Health Information (sometimes referred to as "PHI") – for purposes of this policy means individually identifiable health information, that relates to the past, present or future health care services provided to an individual. Examples of Protected Health Information include medical and billing records of the patient.

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.

For the purposes of the definition of "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 LSUHSC-NO.
- The term "record" also includes patient information originated by another health care provider and used by LSUHSC-NO to make decisions about a patient.

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- The term "record" includes tracings, photographs, videotapes, digital and other images that may be recorded to document care of the patient.

Designated Record Set – is a group of records maintained by or for LSUHSC-NO that is:

- The medical records and billing records about individuals maintained by or for LSUHSC- NO ; or
- Any records used, in whole or part, by or for LSUHSC- NO to make decisions about individuals.
- Any record that meets this definition of Designated Record Set which are held by a HIPAA Business Associate of LSUHSC- NO and are part of LSUHSC- NO's Designated Record Set.

Privacy Officer – Person designated by the facilities and clinics as the Privacy Officer. Is the individual identified by LSUHSC-NO to be responsible for receiving and processing requests to receive communications of their Protected Health Information by alternative means or at alternative locations.

PROCEDURE:

1.0 Authorization Required for Use & Disclosure of PHI for Marketing

1.1 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 section below, Authorization Not Required for Use & Disclosure of PHI for Marketing Communications. 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.

1.1.1 To be valid, an authorization must include:

- All of the core elements and required statements as detailed in the HIPAA Authorization Policy. (See Policy: Use or Disclosure of PHI that requires Individual Written Authorization.)
- 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.
- For further guidance on authorizations, see HIPAA Authorization policy for information on:
 - The steps for responding to and processing of authorizations for use and disclosure of PHI;
 - The patient's right to revoke an authorization;
 - Authorization and revocation documentation and retention requirements;
 - The prohibition on conditioning of authorizations; and
 - Other requirements related to authorizations for use and disclosure of PHI.
 - A copy of the signed authorization must be given to the patient or personal representative.

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1.2 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.

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

2.1 The facility may use or disclose PHI for marketing without an authorization only if the communication is made in the form of:

- A face-to-face communication made by a covered entity to a patient or personal representative; or
- A promotional gift of nominal value provided by the facility.

3.0 Responsibilities

The facility must designate the personnel who are 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.

3.1 The facility must designate the personnel who are responsible for obtaining authorizations from patients for use and disclosure of PHI for marketing purposes.

3.2 The facility must designate the personnel who are responsible for determining whether a “promotional gift is of nominal value.”

3.3 The facility must obtain business associate contracts with any business associates involved in the production, distribution, or processing of marketing communications.

4.0 Special Considerations

4.1 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.

4.2 Notice of Privacy Practices - The facility’s Notice of Privacy Practices must include a statement that the facility may contact the patient to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to the patient. See HIPAA Policy on Notice of Privacy Practices.

4.3 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.

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- 4.4 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.”
- 4.5 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.
- 4.6 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:

45 C.F.R. 164.508