

Procedure 5034 PR.1
Uses and Disclosures of PHI for Marketing
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Marketing Definition 1
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Marketing Definition

Marketing is defined in the HIPAA regulations as: (1) to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made:

- (a) to provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual, only if the financial remuneration received by the covered entity in exchange for making the communication is reasonable in relation to the covered entity's costs of making the communication; or
- (b) for the following purposes except where the covered entity receives financial remuneration in exchange for the communication
 - i. 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 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); or
 - ii. for treatment of the individual, including case management or care coordination, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual; or
 - iii. for case management or care coordination, contacting of individuals with information about treatment alternatives and related functions to the extent that these activities do not fall within the definition of treatment.

Uses and Disclosures of PHI for Marketing

An authorization for uses and disclosures of protected health information must be obtained from patients in order to use or disclose their protected health information for marketing. The authorization must specify:

- A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
 - The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
 - The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure;
 - A description of the purpose of the requested disclosure, specifying that it is for marketing communications about products or services the patient may wish to purchase.
 - ¶ The remuneration involved if the marketing involves financial remuneration to Yale University from a third party;
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- An expiration date or event that reflects the conclusion of the specific marketing campaign for which the authorization is requested;
- A statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization;
- A statement that Yale University may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization;
- A statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer be protected by the Privacy Rule;
- Signature of the individual or their personal representative and date; and
- If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual.

The individual responsible for the marketing communication program/campaign will work with the Yale University Privacy Office and General Counsel's Office to manage the process of obtaining and tracking authorizations.

An authorization is not required for face-to-face communications made by Yale University to an individual or for Yale University to provide a promotional gift of nominal value to an individual.

Those communications described in the HIPAA glossary as not meeting the definition of "marketing" would also not require an authorization. For example, the HIPAA definition of marketing excludes most prescription refill reminders as well as most treatment and health care operational communications for which no financial remuneration is received in exchange for communicating with the patient.

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