

**DEPARTMENT OF HEALTH SERVICES
COUNTY OF LOS ANGELES**



SUBJECT: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI) FOR
MARKETING PURPOSES

POLICY NO: 361.29

PURPOSE:

To establish a policy and procedure for the use and disclosure of Protected Health Information (PHI) for marketing purposes.

POLICY:

It is the policy of DHS facilities to obtain an individual's authorization for any use or disclosure of Protected Health Information for marketing purposes except if the communication is in the form of :

- A. A face-to-face communication made by the facility to an individual, or
- B. A promotional gift of nominal value provided by the facility.

If the marketing involves direct or indirect remuneration to the facility from a third party, the authorization must state that such remuneration is involved.

DEFINITIONS:

Authorization means the signed Authorization language used by DHS to obtain an individual's permission prior to Using or Disclosing that individual's PHI for purposes that do not fall within the definitions of Treatment, Payment or Health Care Operations activities and other purposes that do not require the individual's permission.

Disclose or Disclosure means, with respect to PHI, the release of, transfer of, provision of access to, or divulging in any manner of PHI outside of DHS' internal operations or to other than its Workforce Members.

Marketing means:

- (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
- (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

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products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits.

(ii) For the treatment of the individual; or

(iii) 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 DHS and any other entity whereby DHS discloses protected health information 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 individually identifiable information relating to past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual.

Use or Uses means, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such information within DHS' internal operations.

PROCEDURE:

1. Marketing is any communication about a product or service that encourages recipients of the communication to purchase or use the promoted product or service.
 - A. If DHS Discloses PHI to another entity to promote a product or service of that entity or its affiliate, and DHS receives direct or indirect remuneration from that Disclosure of PHI (e.g., selling a patient list to a pharmaceutical company for promoting a new drug), such Disclosure is Marketing and requires an Authorization.
 - B. Exclusions: The following communications are not considered Marketing, and do not require an Authorization.
 - i. When describing a health-related product or service provided by the DHS facility;
 - ii. For treatment of an individual receiving the communication;
 - iii. For case management or care coordination for an individual receiving the communication; and

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- iv. When informing an individual of alternative treatments, therapies, health care providers, or settings of care.
2. Except as provided in paragraph 3 below, DHS cannot conduct Marketing activities that involve Use or Disclosure of PHI without an individual's Authorization.
 - A. If Marketing involves direct or indirect remuneration to DHS paid by a third party (see, e.g., Section 1.A. above), the Authorization must state that such remuneration is involved.
3. Notwithstanding the above, DHS does not need an Authorization for the following Marketing activities:
 - A. A face-to-face communication made by DHS to an individual (e.g., providing a sample or information of another entity's product); and
 - B. Giving an individual a gift of nominal value (e.g., mailing pens, calendars, and other inexpensive items provided by the DHS facility).
4. Documentation Retention: Documentation required or completed under this policy shall be retained for at least six years from the date of creation or the date when it was last in effect, whichever is later.

REFERENCES:

Code of Federal Regulations 45 Part 160 and 164: Section 164.508(a)(3) "Uses and disclosures for which an authorization is required."

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