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Owner: *David Behinfar: HCS Exec Dir Privacy*
Policy Area: *HIPAA - Privacy*
Policy Tag Groups:
Applicability: *UNC Health Care System (all owned and managed entities)*

Uses and Disclosures of PHI for Marketing

APPLICABILITY:

This policy applies to the following entities (collectively referred to as "UNC Health" in this policy):

✓ UNC Health Care System/UNC Medical Center*	✓ Johnston Health
✓ UNC Physicians Network	✓ Lenoir Memorial Hospital
✓ UNC Physicians Network Group Practices	✓ Margaret R. Pardee Memorial Hospital
✓ Rex Healthcare / Rex Hospital	✓ Nash Healthcare System / Nash Hospitals
✓ Chatham Hospital	✓ Wayne UNC Health Care
✓ Caldwell Memorial Hospital	
✓ UNC Rockingham Health Care / UNC Rockingham Hospital	

* UNC Medical Center includes all UNC Hospitals' facilities and the clinical patient care programs of the School of Medicine UNC-Chapel Hill (including UNC faculty physicians).

I. Description

UNC Health will use and disclose protected health information (PHI) for marketing purposes only as permitted by the federal privacy regulations. UNC Health shall obtain an authorization from patients for any use or disclosure of PHI for purposes of Marketing in accordance with this policy.

Included within the scope of this policy are the patient care programs of the UNC School of Medicine (UNC SOM). As a result, this policy shall apply to all UNC SOM personnel, including but not limited to faculty, staff, students, trainees, interns and volunteers who may be full-time, part-time, paid or unpaid who create, store, transmit, access or use any patient information in support of clinical purposes for UNC Health or any other healthcare entity.

II. Policy

A. **Authorization for Marketing Required.** The UNC Health Authorization to Use or Disclose PHI for

Marketing available through UNC Health Privacy Office must be signed by the patient before using or disclosing PHI for Marketing purposes which include:

1. Providing subsidized treatment communications to patients; or
2. Using or disclosing any information about or from the patient if the information will be used in or for marketing purposes, including, but not limited to, patient photographs and testimonials.

B. **Authorization for Marketing is not required.** The UNC Health Authorization to Use or Disclose PHI for Marketing is not required when the marketing activity consists of:

1. a face-to-face communication to a patient; or
2. a promotional gift of nominal value given to the patient.

C. **Marketing Authorization Language.** If Marketing involves the direct or indirect remuneration, including but not limited to gifts, fees, payments in cash or in kind, subsidies or other economic benefits paid to UNC Health or any UNC Health Facility from a third party, the authorization must state that such remuneration is being paid by the third party.

D. **When Payment is Received for Marketing.** If a Marketing communication involves direct or indirect reimbursement or payment from a third party, the authorization form signed by the patient allowing the use of his or her PHI must disclose such remuneration resulting from the Marketing, and must be approved by the UNC Health Privacy Office (or appropriate UNC Health Facility Privacy Office) in advance. Please contact the UNC Health Privacy Office (or appropriate UNC Health Facility Privacy Office) if payment is being received for a Marketing communication sent by or on behalf of UNC Health or a UNC Health Facility.

E. **Health-based Marketing Communications.** If a UNC Health Facility engages in any marketing communications based on a patient's health status, the UNC Health Facility must incorporate language similar to the following into the marketing communication:

"This material has been presented to you because [the UNC Health Facility] has determined that the products/services offered herein would be beneficial to your health, particularly by [insert explanation as to how the product or services relate to the health of the Individual targeted]"

F. **Use the *UNC Health Authorization to Use or Disclose PHI for Marketing form*** available through UNC Health Privacy Office to obtain written authorizations from patients prior to:

- Providing **subsidized treatment** communications to patients, if the communication will not be made face-to-face by someone from UNC Health or does not consist of a promotional gift of nominal value provided by UNC Health;
- Using or disclosing **any** information about or from the patient if the information will be used in or for marketing purposes, including, but not limited to, patient photographs and testimonials.

G. **Immediately report** the UNC Health Privacy Office (or appropriate UNC Health Facility Privacy Office) any communications from patients and others who have requested to stop receiving future marketing communications to ensure that no more communications are sent.

H. **Maintain Documentation.** Maintain signed authorization forms from those persons who have specifically agreed to receive more specific marketing communications, based on their written authorization for at least six years.

III. Definitions

Marketing – means communications about our health services that encourages recipients of the communication to purchase or use our services. **Marketing does not include the following activities:**

1. To provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual. UNC Health Facilities may only receive financial remuneration for making the communication that is reasonably related to Facility's cost of making the communication.
2. UNC Health Facilities may use PHI without an authorization to make communications for the following treatment and health care operation purposes, but may not receive financial remuneration for making the communication:
 - For treatment of an individual by a health care provider, including 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;
 - 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 who is 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
 - For case management or care coordination, contacting of individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment.

Financial remuneration – means direct or indirect payment from or on behalf of a third party whose product or service is being described. Direct or indirect payment does not include payment for treatment of an individual. Financial remuneration does not include "in-kind" benefits. Financial remuneration in this context does not include remuneration for purposes other than for making the communication.

IV. References

45 C.F.R. §§ 164.501, 508(a)(3); 164.514(f)(2); HITECH § 13406, 42 U.S.C. 17936

V. Related Policies/Forms

Attachments

No Attachments

Approval Signatures

Step Description	Approver	Date
	Jerylyn Williams: Chief Audit & Compliance Ofcr	06/2020
SYSTEM Site Administrator	Emilie Hendee: HCS Attorney Sr	06/2020
	David Behinfar: HCS Exec Dir Privacy	06/2020

Applicability

Caldwell Memorial Hospital, Chatham Hospital, Johnston Health, Nash UNC Health Care, Pardee Hospital, UNC Health Care System, UNC Lenoir Health Care, UNC Medical Center, UNC Physicians Network, UNC Rex Healthcare, UNC Rockingham Health Care, Wayne Memorial Hospital

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