

Release of Information for Marketing or Fund-Raising Purposes (2001)

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Requests for individually identifiable patient health information for use in marketing and fund raising are not uncommon. Within a healthcare organization, patient information might be used to identify potential benefactors or those interested in one of the facility's new services. Externally, medical, surgical, and pharmaceutical companies want information to identify potential customers. Organizations must establish clear policies and procedures that address the use of individually identifiable patient health information for marketing and fund raising.

Standards for Privacy of Individually Identifiable Health Information

The HIPAA standards for privacy of individually identifiable health information require covered entities (health plans, healthcare clearinghouses, and healthcare providers that transmit certain transactions electronically) to adhere to certain standards relative to the use and disclosure of individually identifiable health information for marketing and fund raising purposes. Briefly, the standards state that:

- a covered entity may not use or disclose protected health information for marketing without a valid authorization, except when the marketing communication to the individual occurs face to face, concerns products or services of nominal value, or concerns the health-related products and services of the covered entity or a third party and the communication:
 - identifies the covered entity as the party making the communication
 - prominently states the fact that the covered entity has or will receive direct or indirect remuneration when that is the case
 - when marketing is targeted, explains why the individual has been targeted and how the product or service relates to the health of the individual
 - except when the communication is contained in a newsletter or general communication device to a broad cross section of individuals, contains instructions describing how the individual may opt out of receiving future communications
- the covered entity must make reasonable efforts to ensure that individuals who decide to opt out of receiving future marketing communications are not sent such communication
- a covered entity may disclose protected health information for purposes of marketing to a business associate that assists the covered entity with such communication
- a covered entity may use or disclose without an authorization an individual's demographic information and dates of service to a business associate or institutionally related foundation, for the purpose of raising funds for its own benefit
- if individually identifiable health information will be used for marketing or fund-raising purposes without a specific authorization, those activities must be included in the notice of information practices

State Law

Individual states may also have laws or regulations relative to the use of patient health information for marketing. As the standards for privacy will preempt state law, except where state law is more stringent, health organizations may find it necessary to consult legal counsel when developing their own policies and procedures.

Recommendations

1. **Become knowledgeable about the standards** and any other federal and state laws and regulations for your facility's population that address the use of individually identifiable patient health information for marketing or fund-raising purposes.
2. **Draft policies and procedures** to address the handling of requests for individually identifiable patient health information for marketing or fund-raising purposes. One possible approach would be to enlist the expertise of the institutional review or privacy board or to identify a committee responsible for approving or disapproving requests.
3. **Ask legal counsel** to review draft policies and procedures.
4. **Establish a system** wherein patients who wish to opt out of targeted marketing can be identified and omitted from future communications of that nature.
5. In the organization's notice of privacy practices, **include a description about the use** or disclosure of individually identifiable health information for marketing or fund raising that will occur without the patient's specific written authorization.
6. **Educate staff** about the issues, policies, and procedures related to health information for marketing and fund raising.
7. **Monitor adherence** to policies and procedures and implement corrective action where indicated.

Prepared by

Gwen Hughes, RHIA, HIM practice manager

Acknowledgments

Mary Brandt, MBA, RHIA, CHE
Jill Callahan Dennis, JD, RHIA
Cheryl M. Smith, BS, RHIT, CPHQ

Reference

"Standards for Privacy of Individually Identifiable Health Information; Final Rule." 45 CFR Parts 160 and 164. *Federal Register* 65, no. 250 (December 28, 2000). Available at <http://aspe.hhs.gov/admsimp/>.

This article is based on the privacy rule issued on December 28, 2000. At press time the rule was under review by the new administration and could be subject to change.

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