

THE CHILDREN'S MERCY HOSPITAL HIPAA & PRIVACY MANUAL POLICY

TITLE: Marketing Under HIPAA

EFFECTIVE DATE: 01/18

REVISION DATE:

REVIEWED WITH NO CHANGES:

RETIRED:

PURPOSE: To facilitate compliance with requirements of the Health Insurance Portability and Accountability Act (“HIPAA”) Standards for Privacy of Individually Identifiable Health Information (“Privacy Standards”), 45 CFR Part 164 and the sections that relate to uses and disclosures of protected health information (“PHI”) for Marketing purposes, and the Health Information Technology for Economic and Clinical Health Act (“HITECH”) component of the American Recovery and Reinvestment Act (“ARRA”).

SCOPE: All locations, including without limitation Children’s Mercy Hospital Adele Hall Campus, Children’s Mercy Hospital Kansas, and Children’s Mercy Clinics (the “Hospital”).

DEPARTMENT RESPONSIBLE FOR POLICY MANAGEMENT:

Corporate Compliance

POLICY: An Authorization signed by the patient or the patient’s legal guardian is required and must be obtained for any uses or disclosures of PHI for purposes of Marketing under the HIPAA Privacy Standards.

PROCEDURE:

I. Identifying Marketing Communications

- A. “Marketing” includes communications by the Hospital about a product or service that encourages recipients of the communication to purchase or use the product or service, other than those communications excluded from the definition of Marketing (see Section II-B).
 - 1. For example: *A communication from the Hospital informing former patients about a cardiac facility, that is not part of the Hospital, that can provide a baseline EKG for \$39, when the communication is not for the purpose of providing treatment advice.*
- B. Marketing does not include Hospital communications described in this Section.
 - 1. Communications to provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual.
 - i. Note, if the Hospital receives Financial Remuneration in exchange for making the communication, the communication is excepted from the definition of Marketing only if the Financial Remuneration received by the Hospital in exchange for making the communication is reasonably related to the Hospital’s cost of making the communication. Costs which fall within permissible Financial Remuneration include costs of labor, supplies and postage, but do not include profit or payment for other costs.

2. For the following treatment and health care operations purposes, except where the Hospital (or its Business Associate) receives Financial Remuneration in exchange for making the communication:
 - i. 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.
For example: An endocrinologist shares a patient's medical record with several behavior management programs to determine which program best suits the ongoing needs of the individual patient.
 - ii. 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 Hospital, 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.
For example: The hospital uses its patient list to announce the arrival of a new specialty group (e.g., orthopedic) or the acquisition of new equipment (e.g., x-ray machine or magnetic resonance image machine) through a general mailing or publication.
 - iii. 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.

II. Authorization Requirement

- A. Authorization must be obtained from a patient or the patient's legal guardian for any use or disclosure to a third party of PHI for Marketing, except for communications in the form of:
 1. a face-to-face communication made by a Hospital Workforce member to an individual; or
 2. A promotional gift of nominal value provided by the Hospital.
- B. If Marketing involves Financial Remuneration to the Hospital, the Authorization must state that such Financial Remuneration is involved.

III. Additional Requirements

- A. If the Hospital seeks to engage a patient for Marketing or other public relations purposes (i.e. to use a patient's testimonial in Marketing or public relations materials), the Hospital must have two forms executed:
 1. Authorization for the Use and Disclosure of Health Information; and
 2. Consent, Waiver and Release of Images form.
- B. If any non-Hospital staff will be photographed or audio- or video-recorded for the Hospital's Marketing or other public relations purposes, the Hospital must obtain an executed Consent, Waiver and Release of Images form.
- C. All Marketing and public relations materials prepared by or on behalf of the Hospital will:
 1. Identify the Hospital as the party making the communication; and

2. Prominently indicate if any third party paid the Hospital to make the communication (as further described in Section II-B).
- D. The Hospital Communication and Marketing Department and Department of Philanthropy may access the Hospital system for the purpose of creating lists of patients (and identifying the patient's legal guardian, as applicable) to request Authorization for the Hospital's use or disclosure of PHI for Marketing and/or public relations purposes.
 - E. In preparing Marketing and public relations materials, the Hospital may share PHI with contractors such as writers, photographers and printers, provided that such contractors are first required to sign a Business Associate Agreement with the Hospital to ensure that the privacy and security of the patient protected health information is maintained in accordance with federal law.
 - F. Marketing and public relations mailing lists may be shared with mail house partners that have signed a Business Associate Agreement with the Hospital to ensure that the privacy and security of the patient information is maintained in accordance with federal law.
 - G. The Hospital will not distribute on behalf of or provide its mailing list to any outside organization, agency or individual whose purpose is to create or provide marketing, public relations or fundraising materials for their own purpose(s). The Hospital will not sell patient information, except in accordance with the Hospital's *Sale of Protected Health Information Standard* outlined in the HIPAA & Privacy Manual.

DEFINITIONS:

Authorization: A detailed document that meets HIPAA's requirements for valid authorization, and which gives the Hospital permission to use protected health information for specified purposes, or to disclose protected health information to a third party specified by the patient.

Business Associate: See the Hospital HIPAA & Privacy Manual standard titled *Disclosures to Business Associates and Their Subcontractors*.

Business Associate Agreement: See the Hospital HIPAA & Privacy Manual standard titled *Disclosures to Business Associates and Their Subcontractors*.

Financial Remuneration: 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 any payment for treatment of an individual.

Workforce: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the Hospital or the Hospital's Business Associate, is under the direct control of the Hospital or such Business Associate, whether or not they are paid by the Hospital or Business Associate.

REQUESTS FOR GUIDANCE REGARDING THE POLICY: Requests for guidance from this policy will be directed to the Administrative Council Sponsor for this policy.

RELATED POLICIES:

Uses and Disclosures for which an Authorization is Required – Documentation and Content

Notice of Privacy Practices
Disclosures to Business Associates and their Subcontractors

RELATED FORMS:

Notice of Privacy Practices
Authorization for the Use and Disclose Health Information
Consent, Waiver and Release of Images

REFERENCES:

[HIPAA for Professionals/Privacy](#)
[HIPAA for Professionals/Consent and Authorization](#)

REGULATIONS:

45 CFR 164.501
45 CFR 164.508(a)(3)
45 CFR 160.103

KEYWORD SEARCH:

Marketing, Notice of Privacy Practices, Authorization

POLICY CONTENT OWNER:

Mikki Massey, Privacy Officer

ADMINISTRATIVE COUNCIL SPONSOR:

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REVIEWED BY:

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REVIEW PERIOD:

3 years

FINAL APPROVAL:

Kim Brown, VP, Audit & Compliance

Date