

UNIVERSITY OF FLORIDA
INFORMATION PRIVACY POLICIES & PROCEDURES
HEALTH INFORMATION OPERATIONAL GUIDELINES

I. Uses and Disclosures: Marketing and Fundraising

A. POLICY

Rev. 6/1/2009

1. **Use and Disclosure:** The University will use and disclose PHI for marketing and fundraising purposes only as permitted by the federal privacy regulations and relevant Florida laws.
2. **Opt-Out:** Patients are permitted to either confirm their acceptance of, or “opt out” of, receiving fundraising solicitations and materials and marketing information. The University will make reasonable efforts to ensure that individuals who request to opt out of receiving marketing and/or fundraising communications are not sent such communications.
3. **Written authorization:** is required from the patient for uses or disclosures of PHI that exceed federal or state defined limits for marketing and fundraising.
4. **Entities involved in fundraising** for the University’s Health Science Center must sign a statement annually attesting to compliance with HIPAA regulations.
5. **Approval Required:** Marketing and fundraising activities that do not meet the following Privacy Requirements must be approved in writing by the Privacy Office.

B. DEFINITIONS

1. **Fundraising:** To solicit and acquire monetary and other resources for an institution or organization.
2. **Marketing:** To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

C. PRIVACY REQUIREMENTS

1. **Fundraising:**

a) *Without specific written authorization from the patient, the University of Florida may use or disclose only a limited amount of protected health information for the purpose of raising funds for its own benefit. Such limited PHI includes only the following:*

(1) Demographic data related to the patient, limited to:

(a) *Patient’s name, age, and gender*

(b) *Patient’s address and contact information (phone numbers)*

(c) *Patient’s health insurance status, i.e., whether the patient has health insurance or not. (The insurance carrier’s name, type of insurance, amounts of coverage, etc., as well other payment arrangements, are not included.)*

(2) Dates of health care services provided to the patient.

NOTE: Information concerning the patient’s diagnoses, treatments, and services provided is specifically not included.

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- b) *The University may disclose the PHI listed above to a business associate or to an institutionally related foundation for the purpose of raising funds on behalf of the University.*
- (1) A valid Business Associate Agreement must be in place in addition to a contract for services before an external fundraiser may use the PHI. The business associate must agree to only use the PHI for the University's fundraising activities.
 - (2) The University's development foundation must have written authorization from the patient or legal representative to maintain other data (beyond what is listed above) about individual patients, specifically, information related to diagnoses, treatments, or services provided, which could be used to target specific patients for fundraising purposes.
- c) *If the University discloses PHI while engaging in fundraising on behalf of another entity, the disclosures must be documented in the online Disclosure Tracking System for future disclosure accounting purposes. The College, Department, Division or Clinic that makes the disclosure is responsible for entering the required data in the system. (See Accounting for Disclosures in this manual.)*

2. Marketing:

- a) *The following types of communications are considered marketing and require prior authorization from the patient:*
- (1) Making a communication about a product or service that encourages recipients to purchase or use a product, except in the cases listed in b) below; and
 - (2) Any arrangement between the University of Florida and any other entity whereby the University discloses patient information to the other entity, in exchange for direct or indirect remuneration, for the other entity to make a communication that encourages recipients to purchase or use its own product or service.
- b) *The following types of communication are not considered marketing and do not require authorization from the patient:*
- (1) To describe a health-related product or service that is provided by, or included in a plan of benefits of, the University;
 - (2) For treatment of the patient; or
 - (3) For case management or care coordination for the patient, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the patient.
 - (4) Notes from the OCR guidelines (12/03/02): "Simply put, a covered entity may not sell protected health information to any third party for that party's own purposes. Moreover, covered entities may not sell lists of patients or enrollees to third parties without obtaining authorization from each person on the list."

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For Example: A drug manufacturer may not, without the written authorization of each patient, “buy” a list of patients who have a specific diagnosis from a covered health care provider, and then use that list to send discount coupons for a new medication directly to those patients.

- c) *The University may disclose PHI, with the patient’s written authorization, to a business associate, which is conducting marketing activities on behalf of the University. A valid Business Associate Agreement must be in place in addition to a contract for services before the business associate may use the PHI. The business associate must agree to only use the PHI for the University’s marketing activities.*

D. PROCEDURES

1. Include the following in all fundraising materials sent to patients:

- a) *A description of how the patient, by completing and signing an authorization, may give permission for the University to use or disclose other protected health information for the purpose of fundraising.*
- b) *A description of how the patient may “opt out” of receiving further such communications (i.e., to affirm in writing their wish to be excluded from further solicitations).*

2. Obtain written authorizations from patients prior to using or disclosing any information about them or from them for fundraising or marketing purposes, including, but not limited to, photographs and testimonials.

3. Maintain a log of all patients and others who have opted out of receiving future fundraising communications to ensure that no more communications are sent.

4. Provide and Maintain Authorizations to Use or Disclose Protected Health Information for fundraising or marketing (see Forms) from those persons who have specifically agreed to receive more specific fundraising communications. (See Authorizations in this manual.)

5. Track all disclosures of PHI for accounting purposes if the University discloses PHI while engaging in fund-raising on behalf of another entity. (See Accounting for Disclosures in this manual.)

E. REFERENCES:

HIPAA: 45 CFR §164.502 (Uses and Disclosures: General Rules), §164.514(f) (Other Requirements)

F. EXHIBITS:

Attestation of Compliance for Fundraising

ATTESTATION OF COMPLIANCE FOR FUNDRAISING

I _____, a duly authorized representative of *[insert legal name of business associate or institutional foundation & description of entity here]* hereby acknowledge that the above described entity, including its employees, agents and volunteers are in full compliance with UF's Privacy Policy entitled "*Uses and Disclosures of PHI: Marketing and Fundraising*", and specifically, the policies, requirements, and procedures related to use of protected health information for fundraising.

Signature

Date

Title