

Yakutat Community Health Center

Privacy 11.0-USE/DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR MARKETING PURPOSES

164.508(a)(3)

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Responsible for Review: **Chief Compliance Officer**

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Policy:

It is the policy of Yakutat Community Health Center to secure an authorization to use or disclose Protected Health Information (PHI) for marketing purposes in compliance with the Privacy Rule of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 [164.501, 164.508(a)(3)].

Definition:

Per 164.501, marketing is defined as:

- 1) To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service; or
- 2) An arrangement involving a covered entity whereby PHI is disclosed by the covered entity in exchange for direct or indirect remuneration, so that the other entity or affiliate can make a communication that encourages the purchase or use of its own product or service.

The following are examples of situations that do not meet the definition of marketing:

- 1) Communications that are merely promoting good health and not about a specific product or service does not meet the definition of "marketing." So mailings reminding women to get an annual mammogram, or with information about how to lower cholesterol, about new developments in health care like new diagnostic tools or about health or "wellness" classes, support groups and health fairs are permitted and not considered marketing.
- 2) Communications about government-sponsored programs do not fall within the definition of marketing. There is no commercial component to communications about benefits available through public programs. So covered entity is permitted to use/disclose PHI to communicate about eligibility for Medicare supplement benefits, or SCHIP.
- 3) Covered entities may make communications in newsletter format without authorization so long as the content of such does not fit the definition of "marketing".

Exceptions to the Scope of Marketing Activities so Authorization is not needed:

Marketing does not include:

- 1) Oral or written communications that describe YCHC's network or covered services
- 2) Communications about treatment for the patient

- 3) Communications about case management or care coordination, or recommendations of treatment alternatives and care options, including health care providers or settings of care

The following are examples of these exceptions:

- 1) YCHC can convey information to beneficiaries and members about health insurance products offered by the YCHC that could enhance or substitute for existing health plan coverage. For example, if a child is about to age out of coverage under a family's policy, this provision will allow the plan to send the family information about continuation coverage for the child. This does NOT extend to excepted benefits such as accident-only policies or to other lines of insurance.
- 2) Doctors can write a prescription or refer an individual to a specialist for follow-up tests because these are communications about treatment.

Procedure for Authorization to Use or Disclose PHI for Marketing Purposes:

1. YCHC will obtain an authorization for any use or disclosure of PHI for marketing, except if the communication is in the form of a:
 - b) Face-to-face communication with the patient
 - c) Promotional gift of nominal value provided by YCHC
2. If the marketing involves YCHC receiving direct or indirect remuneration by a third party, the authorization will state that such remuneration is involved.

The following are examples of situations that require authorization:

- 1) NPRM clearly states that nothing in the Final Rule will permit a covered entity to sell lists of patients or enrollees to third parties or to disclose PHI to a third party for the independent marketing activities of the third party. A pharmaceutical company cannot pay a provider for a list of patients with a particular condition or taking a particular medication and then use that list to market its own drug products directly to those patients.

References:

- 45 CFR 164.501 and 164.508(a)(3)

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