

	Ethics & Compliance Department	
	Policy No.: 20	Created: 01/2018
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HIPAA: USING AND DISCLOSING PHI FOR MARKETING OR FUNDRAISING ACTIVITIES

SCOPE:

All Envision Healthcare teammates. For purposes of this policy, all references to “teammate” or “teammates” include temporary, part-time and full-time employees, independent contractors, clinicians, officers and directors.

PURPOSE:

Envision Healthcare Operating, Inc. and its subsidiaries and affiliates (“Envision” or “the Company”) has adopted this Using and Disclosing PHI for Marketing or Fundraising Activities policy to address the specific and limited uses of protected health information (“PHI”) for marketing purposes where a patient authorization for disclosure is not required, fundraising activities, and the limitations on the sale of PHI.

POLICY:

Marketing

In general, the Company will not use or disclose PHI for marketing purposes without an authorization from the patient. However, the Company may use or disclose PHI to make a “marketing communication” under certain circumstances without patient authorization. This “marketing communication” is considered a function of health care operations. The Company may use or disclose PHI for the purpose of a “marketing communication” when the communication:

- 1) Occurs in a face-to-face encounter with the individual;
- 2) Concerns products or services of nominal value (e.g. distribution of calendars, pens etc.); or
- 3) Concerns the Company’s or a third party’s health-related products and services as long as the Company is not receiving any remuneration for making the communication.

If the Company uses or discloses PHI to target the communication to patients based on their

	Ethics & Compliance Department	
	Policy No.: 20	Created: 01/2018
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health status or condition, the Company must make a determination prior to making the communication that the product or service being marketed may be beneficial to the health of the type or class of patients targeted. In addition, the communication must explain why the patient has been targeted and how the product or service relates to the patient’s health.

The Company must make reasonable efforts to ensure that patients who decide to opt out of receiving future marketing communications are not sent such communications.

The Company may disclose PHI to a business associate for purposes of marketing communications only if the business associate’s function is to assist the Company with conducting the “marketing communications.”

The Company will not sell, nor allow anyone else to sell patient’s PHI.

If the Company receives payment for marketing/communicating treatment options to an individual, the Company will have its Notice of Privacy Practices state that it may communicate in this way and the communication will tell patients that the Company is receiving payment in exchange for the communication and will let patients know how to opt out of further similar communications. The Company will not make opting out financially or otherwise overly burdensome for the patient.

Fundraising

Fundraising is defined as communication by or on behalf of a Covered Entity or a business associate on behalf of the Covered Entity for the purpose of raising funds for the Covered Entity, including donations, appeals, or sponsorship of events, but not royalties or remittances for sale of products.

Fundraising communication is a solicitation for funds and can be in writing or oral. An acknowledgement or thank you letter for receipt of a donation or update of the current development project without request for additional donation would NOT be a fundraising communication. An event invitation that includes a request for a donation to attend an event would be a fundraising communication.

This policy applies to the use or disclosure of protected health information (“PHI”) for fundraising. *Non-PHI* sources such as purchased mailing list, alumnus or employee information, or direct contact initiated by a potential donor are *not* subject to this policy.

	Ethics & Compliance Department	
	Policy No.: 20	Created: 01/2018
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This policy includes all fundraising activities that take place within any department of the Company or on behalf of the Company.

After obtaining a patient authorization to use PHI for fundraising activities, the following PHI is permitted:

- 1) Patient demographics including name, address, contact information including phone number and email address, age, gender, and date of birth;
- 2) Dates of service;
- 3) Department of service (meaning information about general department of treatment, such as cardiology or oncology, that do not indicate a more specific type of diagnosis, nature of services or treatment received by the patient);
- 4) Treating physician name;
- 5) Outcome information (such as death or other sub-optimal results and may only be used to screen or exclude patient families from receiving fundraising communications); and,
- 6) Health insurance status (not defined in the Privacy Rule but interpreted to mean whether patient is insured and type of insurance).

A. Opt-Out Requirements

Any communication, whether verbal or written, that involves a solicitation constitutes a “fundraising” communication and must contain language describing how the individual may opt out of future solicitations. “Opt-out” requirements must be clear and conspicuous and not impose an undue burden. The Company must provide “clear and conspicuous opportunity” to the patient to opt-out of future fundraising communications. If the patient opts out, it must be treated as a revocation of any prior authorization for use or disclosure of PHI for fundraising communications. The method for a patient to opt out must not impose an undue burden or more than a nominal cost on the patient. The Company should consider offering a toll-free number, an e-mail address, a web page, or similar opt-out mechanisms that are simple, quick, and low or no cost to the patient. Requiring a patient to send a written letter opting out of fundraising communications would constitute an undue burden, although including a mailing of a pre-printed, pre-paid, business reply postcard or directing a patient to an opt-out on a web page would be permitted.

The Company may permit general opt-out for all future communications, or to a particular fundraising campaign. Once implemented, however, the Company must not send such further fundraising communications. The Company may, at its discretion, allow patients to

	Ethics & Compliance Department		
	Policy No.: 20	Created:	01/2018
		Reviewed:	06/2025
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actively opt back in to receiving fundraising communications should the patient later change their mind.

The Company may not condition treatment or payment on the individual’s choice with respect to the receipt of fundraising communications.

B. Educational Events Co-Sponsored with a Third Party

The Company may offer educational or awareness campaigns co-sponsored by a third party (e.g., American Heart Association) or include speakers or information from such third parties. The Company, however, is prohibited from sharing PHI with the third party or permitting the third party to use a Company’s patient mailing list or Permitted Fundraising PHI to send co-sponsored fundraising solicitations. The Company should not include third party fundraising information within the event’s communications, e.g., invitation, brochure, or similar communication tools. At the event, the third party may invite patients to provide their contact information in writing, such as a sign-up log, that clearly identifies the third party’s request to contact the patients attending the event, including the possibility that they will be contacted for the third party’s own fundraising efforts. No fundraising related to the third party should occur at the event.

C. Documentation of Patient Authorization

A copy of the patient authorization agreeing to receive fundraising information will be given to the patient and the Company/Department will keep a copy for six (6) years in the medical record or billing record.

Prohibition on Sale of PHI

In general, the Company does not sell PHI of an individual unless it has the authorization of the individual to do so.

- 1) The Company will not sell PHI of an individual unless it has obtained an authorization from the affected individual.
- 2) The sale of PHI is a disclosure of PHI by the Company where the Company directly or indirectly receives payment from the entity receiving the PHI.
- 3) The sale of PHI does not include any of the following, even if the Company receives payment for the disclosures:



Ethics & Compliance Department

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- a. For public health purposes;
- b. For research purposes pursuant to where the only remuneration received by the Company is a reasonable cost-based fee to cover the cost to prepare and transmit the PHI for the research purposes (provided the disclosure would meet the requirements of tracking disclosures of PHI);
- c. For treatment and payment purposes;
- d. For the sale, transfer, merger, or consolidation of all or part of the Company and for related due diligence purposes;
- e. To a business associate for activities that the business associate undertakes on behalf of the Company, if the only payment provided is by the Company to the business associate for the performance of the contracted services;
- f. To the individual to whom the PHI relates;
- g. When required by law; and
- h. For any other purpose permitted by the Company's policies and applicable laws, if the only payment is a reasonable, cost-based fee to cover the cost to prepare and transmit the PHI.

POLICY REVIEW

The Ethics & Compliance Department will review and update this Policy, when necessary, in the normal course of its review of the Company's Ethics & Compliance Program.