

**County Of San Diego  
Health and Human Services Agency (HHSa)**

**Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)  
Key Words: privacy, marketing**

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**SUBJECT: Marketing**

**NO: HHSa-L-15**

**PAGE: 1 of 3**

**DATE: July 27, 2007**

**REFERENCE: Federal Privacy Regulations, 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164.**

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**PURPOSE:** To establish a process on how to handle the marketing of products to individuals where protected health information may be used or disclosed.

**BACKGROUND:** County agencies designated as covered components must comply with privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). They must also comply with California laws and regulations pertaining to the use and disclosure of individually identifiable health information, unless such state laws and regulations are preempted by HIPAA.

HIPAA's privacy regulations outline many detailed requirements protecting the confidentiality of health information and providing individuals significant rights with respect to their health information. Compliance with these regulations is addressed in a series of County policies and procedures.

**DEFINITIONS**

*Note: The definitions below are in compliance with HIPAA and the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule).*

*Individually Identifiable Health Information:* Information that is created or received by the County, that identifies an individual (or could reasonably be used to identify an individual) and that:

- Relates to the past, present, or future physical or mental health or condition of an individual;
- Relates to the provision of health care to an individual; or
- Relates to the past, present, or future payment for the provision of physical or mental health care to an individual

This includes demographic information (such as name, address, date of birth, sex, and race) collected from an individual.

*Legal Representative:* An individual's legal representative may include the following:

- Conservator of the Person – Court appointed;
- Attorney-in-Fact for Health Care – Holder of a valid Durable Power of Attorney for Health Care;
- Guardian of the Person – Court appointed;
- Parent – Unemancipated minor where the minor does not have the authority to authorize the release of records on his or her own behalf;

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- Decedent's Personal Representative – Court appointed;
- Executor of a Decedent's Estate – Court appointed;
- Administrator of a Decedent's Estate – Court appointed;
- Personal Representative – Court appointed; or
- Beneficiary of a Decedent's Estate – Must provide adequate documentation that the person is a beneficiary of the decedent's estate and that no other person has the authority to prevent the release of the PHI.

Note: This policy uses the term "legal representative." That term is meant to be synonymous with the Privacy Rule term "personal representative." This policy uses the term "legal representative" because the term "personal representative" has a separate and distinct legal meaning under California law.

**Marketing:**

(1) To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made:

- 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 County, 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 treatment of the individual; or
- For 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.

(2) An arrangement between the County and any other entity whereby the County discloses protected health information (PHI) to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service.

**Protected Health Information (PHI):** Individually identifiable health information that is transmitted or maintained electronically or by any other medium. PHI does not include educational records of students maintained by federally funded educational agencies or institutions or persons acting for these agencies or institutions. PHI also does not include records of (1) students who are 18 years or older or are attending post-secondary educational institutions, (2) maintained by a physical or mental health care provider, (3) that are made, maintained, or used only in connection with the treatment of the student, and (4) that are not

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available to anyone, except a health care provider or appropriate professional reviewing the record as designated by the student.

**POLICY:** In compliance with state and federal laws and regulations, the County may use or disclose PHI for marketing if the individual provides a valid authorization allowing the use or disclosure or there is an applicable exception as set forth in this policy and procedure.

**PROCEDURES:** The County must obtain an authorization for any use or disclosure of PHI for marketing, except if the communication is in the form of:

- A. A face-to-face communication made by a covered entity to an individual; or
- B. A promotional gift of nominal value provided by the covered entity.

If the marketing involves direct or indirect remuneration to the County from a third party, the authorization must state that such remuneration is involved.

**QUESTIONS/INFORMATION:** Privacy Officer of the County of San Diego

**SUNSET DATE:** This policy will be reviewed for continuance by July 27, 2010.

Approved:



Jean M. Shepard, Director  
Health and Human Services Agency