



POLICY TITLE: 311.00 Marketing - Use and Disclosure of Patient Information, Including Demographic Information, for Marketing & Public Relations Activities

Responsible Department: Corporate Privacy Office

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SUMMARY & PURPOSE:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a Baptist Health or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule sets out how and with whom PHI may be shared. This policy outlines the use of patient information for BHSF Marketing & Public Relations Activities.

POLICY:

It is the policy of Baptist Health South Florida, Inc. ("BHSF" or "Baptist Health") to comply with applicable state and federal laws, including those protecting the confidentiality of patient health information and establishing certain individual privacy rights. It is our policy to implement these laws in a way that supports our primary mission to the community regarding the delivery of quality health care in an efficient manner. This policy governs the use and disclosure of patient information marketing purposes.

SCOPE/APPLICABILITY:

This policy applies to Baptist Health, its affiliates, all workforce members, and others as described below that use or disclose patient information for marketing & public relations activities.

- **Workforce members.** Workforce members means employees, volunteers, trainees, temporary staff, and contractors/consultants who are not independent contractors under *Human Resources Policy 1150 - Independent Contractors*.

All references to Policies must go to the BHSF Master Copy on the BHSF Intranet; do not rely on other versions / copies of the Policy.

- **Medical staff members.** Medical staff members are treated as members of an organized health care arrangement with Baptist Health South Florida and must comply with this policy as if they are workforce members pursuant to their applicable medical staff bylaws.
- **Students.** Employed students are treated as workforce members. Non-employed students (fellows, residents, students) must comply with this policy as if they are workforce members pursuant to the terms of their applicable academic agreements.
- **Independent Contractors and Others.** Independent Contractors and others who have agreed to comply with Baptist Health's policies and procedures as a condition of receiving access to Protected Health Information (PHI) must comply with this policy as if they are workforce members.

DEFINITIONS:

1. Marketing:
 - a. Except as provided in paragraph (2) of this definition, marketing means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.
 - b. Marketing Does Not Include:
 - i. Communications made to provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual, only if any financial remuneration received by the covered entity in exchange for making the communication is reasonably related to BHSF's cost of making the communication.
 - ii. Communications for the following treatment and health care operations purposes, except where BHSF receives financial remuneration in exchange for making the communication:
 - 1) 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;
 - 2) 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 covered entity making the communication, 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; or
 - 3) 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.
2. 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.

PROCEDURES TO ENSURE COMPLIANCE:

1. Baptist Health may not use or disclose PHI for marketing without a HIPAA compliant patient authorization.
 - a. When Baptist Health obtains or receives an authorization for use or disclosure of PHI, such use or disclosure must be consistent with such authorization.
 - b. Marketing and promotion activities include communications to patients about Baptist Health activities and services as well as communications to patients about third party activities and services.
 - c. Certain promotional and treatment activities described in this policy are excluded from the definition of marketing and are permissible without patient authorization.
2. Promotion of Baptist Health Services.

- a. Baptist Health newsletters and magazines that promote its services or facilities may be sent to patient addresses. However, if newsletters or magazines target subgroups of patients based on the disease or condition for which they were treated, they should not include fundraising materials.
- b. Health promotion materials may be sent to patients, and materials that recommend a therapeutically appropriate treatment offered by Baptist Health may be sent to select subgroups to follow up on a prior treatment relationship with Baptist Health.
3. Marketing Third Party Services.
 - a. Anyone covered by this policy may not market third party services to patients. However, a health care professional may make a recommendation regarding a third party's services for treatment purposes during a face-to-face communication with a patient.
 - b. Any other marketing of third party services, including medically appropriate mailings regarding procedures, drugs, or devices, is not allowed if the third party is paying Baptist Health for the distribution of such materials.
 - i. If the third party is not paying Baptist Health for the distribution of materials promoting third party services, then such communication may be sent only if:
 - 1) Baptist Health obtains the patient's written authorization in accordance with Baptist Health HIPAA Privacy Policies; or
 - 2) The communication is made for treatment of the patient.
4. Disclosures of Information for Marketing
 - a. No patient information or list of patients may be provided to any third party for marketing purposes unless the third party is involved in promotion activities for or on behalf of Baptist Health as set forth in this policy and the third party enters into a Business Associate Agreement with Baptist Health in accordance with Baptist Health HIPAA Privacy Policies.
5. Separate Authorizations
 - a. Separate authorizations are generally required for most uses and disclosures for Marketing or to sell Health Information.
6. Deceased individuals
 - a. Baptist Health must comply with the requirements of this policy with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual.

SUPPORTING/REFERENCE DOCUMENTATION:

- Health Insurance Portability and Accountability Act of 1996 as amended from time to time and including any regulations promulgated thereunder (collectively, "HIPAA")
- Applicable Florida State Laws

RELATED POLICIES, PROCEDURES AND ASSOCIATED FORMS:

- Corporate HIPAA Privacy Policies
- BHSF-74220-001.00 Unified Corporate Privacy Policy on HIPAA Compliance
- Attachment - BHSF-74220-6038 Authorization for Use or Disclosure of Health Information for Filming Photo Video or Publication
- Marketing and Public Relations 300 General Information about Marketing / Public Relations 4/09

ENFORCEMENT & SANCTIONS:

1. Reference: Corporate HIPAA Privacy Policy BHSF-74220-605.20 Sanctions for Privacy Violations
2. Violations of this policy will be determined by the Chief Privacy Officer in consultation with the appropriate levels of department leadership and appropriate Human Resources management level. Reference: HR policies 5250 Employee Conduct and 5300 Corrective Action.
3. Violations of this policy may lead to disciplinary action up to and including termination.

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4. Enforcement of this policy will be performed by Baptist Health South Florida's Privacy Office in conjunction with Human Resources, as circumstances may dictate.