**PURPOSE**

To ensure that all marketing and fundraising communications comply with the HIPAA Privacy Rule’s requirements, as well as any applicable state laws or regulations. The goal is for [COVERED ENTITY] to safeguard the patient’s Protected Health Information (“PHI”) when engaging in permitted marketing or fundraising activities.

**POLICY**

Subject to certain defined exceptions, marketing communications utilizing PHI require a prior written authorization from the patient.

Fundraising communications that are made specifically for the benefit of [COVERED ENTITY] and contain only demographic information and dates of service do not require an authorization as long as the [COVERED ENTITY]’s Notice of Privacy Practices describes this limited use of PHI. Fundraising materials must describe how an individual can opt out of receiving future fundraising communications and [COVERED ENTITY] must make reasonable efforts to comply with opt-out requests.

**PROCEDURE**

1. Marketing.
   1. The Privacy Rule defines marketing as a communication and/or disclosure of PHI that encourages an individual to use or purchase a product or service, except under the following conditions:
      1. Communications made directly by [COVERED ENTITY] to describe a health related product or service it provides.
      2. Communications made for treatment of the individual.
      3. Communications for case management or care coordination for the patient.
      4. Communications to direct or recommend alternative treatments, therapies, and health care providers or settings of care.
      5. Face to face communications made by [COVERED ENTITY] representative to an individual.
      6. Promotional gifts of nominal value (defined in policy; for example, less than $25 each gift not to exceed $100.00 per annum) provided by [COVERED ENTITY].
   2. [COVERED ENTITY] must obtain a valid written authorization prior to using or disclosing PHI for purposes that meet the HIPAA definition of marketing and do not qualify for any of the exceptions listed above.
   3. If direct or indirect remuneration to [COVERED ENTITY] from a third party is involved, the authorization must state the nature of such third party remuneration.
   4. No authorization is required in the following situations:
      1. Communications directed at an entire population (not to a targeted individual) that promote health in a general manner and do not endorse a specific product or service;
      2. PHI is not disclosed in a marketing communication (such as a newspaper advertisement).
   5. In the event a planned marketing activity involves payment to [COVERED ENTITY] (e.g., cash, referral, gifts, etc.), anti-kickback, inducement, self-referral, and general fraud and abuse statutes and regulations may apply. These shall be considered and approved prior to implementation of the marketing activity. [COVERED ENTITY] will assure that any marketing activity is in compliance with such laws and regulations.
   6. Business Associates and other third parties. [COVERED ENTITY] may engage a marketing firm to conduct permitted marketing activities on [COVERED ENTITY]’s behalf. Should the marketing activities require the use or disclosure of PHI to the marketing firm, then a Business Associate relationship would exist and a BAA/Addendum would be required. [COVERED ENTITY] may not sell or disclose PHI to a third party to help the third party market its own products or services without a signed authorization from the patient.
2. Fundraising.
   1. When fundraising for its own benefit, [COVERED ENTITY] may, without a patient’s authorization, use or disclose to a Business Associate or to an institutionally related foundation, such as a nonprofit charitable foundation, to act on [COVERED ENTITY]’s behalf, the following information:
      1. Demographic information relating to an individual, and
      2. Dates of health care provided to an individual.
   2. [COVERED ENTITY]’s Notice of Privacy Practices must include the following information:
      1. Notice that [COVERED ENTITY] or its agent may contact the patient to raise funds for [COVERED ENTITY], and
      2. Notice that the patient may opt out of receiving any fundraising communications.
   3. Any fundraising materials [COVERED ENTITY] or its agent sends to an individual must describe how the individual may opt out of receiving any further fundraising communications.
   4. If the fundraising is not for the [COVERED ENTITY]’s benefit or includes more than demographic or dates of service information, an authorization from the individual is required.
   5. [COVERED ENTITY] must make reasonable efforts to ensure that individuals who decide to opt out of receiving future fundraising communications are not sent such communications.