

## Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

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| <b>Policy: HPP 4.10 Using and Disclosing PHI</b>                                                                                      | <b>Effective Date:</b> August 26, 2016   |
| <b>Marketing</b>                                                                                                                      | <b>Last Revision Date:</b> July 19, 2022 |
| <b>References:</b> <a href="http://www.hhs.gov/ocr/hipaa">http://www.hhs.gov/ocr/hipaa</a> , 45 CFR Part 164.501, 164.508 and 164.514 |                                          |

### **Policy Statement**

Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso) shall only use or disclose Protected Health Information (PHI) for marketing activities with a valid authorization that meets applicable requirements under HIPAA except as set forth below. Departments or individuals that wish to conduct marketing activities must contact the Office of Institutional Advancement for assistance and coordination to ensure that privacy requirements and marketing policies are followed.

### **Scope**

This policy includes all TTUHSC El Paso marketing activities and applies to all faculty, staff, and business associates engaged in marketing activities on behalf of TTUHSC El Paso.

**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.

Marketing does not include a communication 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 TTUHSC El Paso in exchange for making the communication is reasonably related to TTUHSC El Paso's cost of making the communication.

- a. TTUHSC El Paso may also use the following types of communication, which are not considered marketing and do not require an authorization, if TTUHSC El Paso has not received financial remuneration in exchange for making the communication:
  - i. 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;
  - ii. 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 health care provider network or health plan network; replacement 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 or benefits; or

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- iii. 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.

**Financial remuneration** - means 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 the treatment of an individual.

### **Procedure**

The Health Insurance Portability and Accountability Act (HIPAA) limits the use and disclosure of Protected Health Information (PHI) for marketing purposes. In general, an authorization by the individual or the individual's Legally Authorized Representative is required for the use or disclosure of PHI for marketing, except as specified below. Any PHI that is used or disclosed by TTUHSC El Paso in compliance with this policy will be limited to the minimum necessary to achieve the purpose of the use or disclosure.

- a. **Use and Disclosure of PHI for Marketing** – Authorization Not Required  
TTUHSC El Paso may use PHI for the following marketing purposes:
  1. Face to face communications between TTUHSC El Paso and the patient;
  2. A promotional gift of nominal value provided by TTUHSC El Paso to the patient (e.g., a pen or pad of paper with TTUHSC El Paso logo).
- b. **Use and Disclosure of PHI for Marketing** – Authorization Required
  1. If TTUHSC El Paso uses PHI for purposes of marketing and receives financial remuneration from a third party, the transaction requires TTUHSC El Paso to first obtain the individual's authorization.
  2. If TTUHSC El Paso sells lists of patients to third parties or discloses PHI to a third party for the independent marketing activities of the third party, TTUHSC El Paso must obtain the individual's authorization.
  3. The authorization must be specific to the use and disclosure requested. A blanket authorization for the use and disclosure of PHI is invalid. If the marketing involves direct or indirect remuneration to the covered entity from a third party, the authorization must state that such remuneration is involved.
  4. Contact the Office of Institutional Advancement and the Office of Institutional Compliance with any questions regarding whether an authorization is required for marketing purposes.
    - a. See OP 67.02 for approval requirements for marketing campaign and advertising guidelines.

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Knowledge of a violation or potential violation of this policy must be reported directly to the Institutional Privacy Officer or the Fraud and Misconduct Hotline at (866) 294-9352 or [www.ethicspoint.com](http://www.ethicspoint.com) under Texas Tech University System.

### **Frequency of Review**

This policy will be reviewed on each even-numbered year (ENY) by the Institutional Privacy Officer, and the HIPAA Privacy and Security Committee, but may be amended or terminated at any time.

Questions regarding this policy may be addressed to the Institutional Privacy Officer or the Institutional Compliance Officer.

**Review Date:** May 9, 2022

**Revision Date:** November 8, 2017, September 15, 2020, July 19, 2022