

[Enter Organization Logo]

USE AND DISCLOSURE OF PHI FOR FUNDRAISING

Policy Number: [Enter]

Effective Date: [Enter]

I. Policy:

A. Purpose

This policy establishes guidelines for *[Organization]*'s workforce to follow regarding the use or disclosure of PHI for fundraising purposes.

B. Policy Implementation

[Organization] may use and disclose PHI for fundraising purposes only in accordance with the HIPAA Regulations, applicable state law, and this Policy.

1. Fundraising without an authorization

[Organization] may use and disclose certain PHI for fundraising without a HIPAA authorization, if *[Organization]* complies with the requirements stated in Section 2 below, and the following circumstances are met:

- a. The fundraising is for the benefit of *[Organization]*;
- b. Any disclosures to a business associate or an institutionally related foundation are addressed in a business associate agreement or otherwise permitted under HIPAA;
- c. *[Organization]* has included a statement in the Notice of Privacy Practices that *[Organization]* may contact the individual to raise funds for *[Organization]* and the individual has a right to opt out of receiving such communications;
- d. The uses and disclosures of PHI are limited to the following subset of PHI (the "Permitted Fundraising Information"):
 - i. Demographic information related to the individual, including name, address, other contact information, age, gender, and date of birth;
 - ii. Dates of health care provided to an individual;
 - iii. Department of service information (for example, information about the general department of treatment such as cardiology, oncology, pediatrics, etc.);
 - iv. Treating physician;
 - v. Outcome information, such as information regarding the death of the patient or any sub-optimal result of treatment or services. The idea is for covered

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entities to use this information in connection with fundraising purposes to screen and eliminate from fundraising solicitations those individuals experiencing a sub-optimum outcome; and

vi. Health insurance status.

The Minnesota Health Records Act requires providers to obtain written consent prior to disclosing health records unless an exception otherwise applies. Use and disclosure of PHI by a covered entity to fundraise for the covered entity's own benefit is considered a "health care operation" of that entity. The patient's consent to the use and disclosures of his or her health records for "health care operations" of [Organization] authorizes [Organization] to use/disclose the Permitted Fundraising Information described in B.1 to fundraise on its own behalf or contract with a business associate or institutionally related foundation for that purpose.

2. Other requirements

If pursuant to Section 1, [Organization] uses or discloses Permitted Fundraising Information for fundraising purposes without the patient's authorization, [Organization] shall satisfy the following requirements:

- a. With each fundraising communication made to an individual, [Organization] must provide the individual with a clear and conspicuous opportunity to elect not to receive any further fundraising communications. The method for an individual to elect not to receive further fundraising communications may not cause the individual to incur an undue burden or more than a nominal cost;
- b. [Organization] may not condition treatment or payment on the individual's choice with respect to the receipt of fundraising communications;
- c. [Organization] may not make fundraising communications to an individual where the individual has elected not to receive such communications;
- d. [Organization] may provide an individual who has elected not to receive further fundraising communications with a method to opt back in to receive such communications;

3. Authorization required

HIPAA requires [Organization] to obtain a valid authorization—that meets the requirements of policy number [Enter], Authorization for Use and Disclosure of PHI—prior to use or disclosure of PHI for the purpose of fundraising if any of the requirements in Sections B.1 or B.2 are not met. For example, [Organization] would need to get authorization for any fundraising that is:

- a. The fundraising is for the benefit of an entity other than [Organization], even if the information at issue would otherwise be Permitted Fundraising Information;

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- b. The disclosure at issue involves activities that are more extensive than fundraising and instead meet the definition of “marketing”;
- c. The PHI used or disclosed includes information other than the Permitted Fundraising Information listed in Section 1(d) above. For example, *[Organization]* wants to use information about a specific illness, diagnosis or disease of recipients to raise funds.

II. Procedure:

- A. Prior to using PHI for fundraising purposes, *[Organization]*'s Privacy Official or designee must:
 - 1. Determine whether the information is Permitted Fundraising Information that meets the requirements of Sections B.1 and B.2 and that the other requirements outlined in those sections are addressed;
 - 2. Determine whether the consent used by *[Organization]* permits the fundraising activities;
 - 3. Determine whether a HIPAA authorization is required for the use or disclosure of the PHI;
 - 4. Verify that a valid authorization has been obtained, if it is determined that an authorization is needed;
 - 5. Verify that the other requirements described in this policy have been met.