Tulane University Policy on Marketing Activities

SCOPE OF POLICY

This policy applies to Tulane University Medical Group, its participating physicians and clinicians, and all University employees and business units who provide management, administrative, financial, legal, and operational support to or on behalf of Tulane University Medical Group and have been designated as part of the Tulane University Health Care Component (“Health Care Component”).

STATEMENT OF POLICY

The Health Care Component may not use or disclose protected health information for purposes of marketing to patients without an authorization signed by the patient (pursuant to Policy GC-010). Marketing means the use or disclosure of PHI to make a communication about a specific product or service that encourages recipients of the communication to purchase or use the product or service. However, several exceptions apply to the definition of marketing that exempt many types of routine communications in the health care provider setting from the authorization requirement, as described below. If an exception applies, no authorization is required. No marketing communications that require authorization may be made without the prior approval of the Privacy Official or designee in accordance with the following procedures.

IMPLEMENTATION OF POLICY

Authorization is required for the use of protected health information in marketing communications, unless an exception applies. In some cases, whether an exception will apply will depend on whether, and to what extent, the Health Care Component has received remuneration in exchange for making the marketing communication.

“Remuneration” means a direct or indirect payment made to the Health Care Component by a third party in exchange for recommending the third party’s product or service, regardless of whether the recipient of the communication ever uses the recommended product or service. Remuneration does not include payment for treatment of an individual.

Marketing does not include, and an authorization is not required, for the use or disclosure of protected health information to make the following communications:

a. Treatment and Health Care Operations Purposes. The Health Care Component may make the following communications that encourage the recipient of the communication to purchase or use the product or service without authorization so long as no remuneration is received in exchange for making the communication:

   For treatment of the individual by a health care provider, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual;

   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 Health Care Component, 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 to only a health plan enrollee that add value to, but are not a part of, a plan of benefits; or

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.

For example, if a medical equipment manufacturer pays the Health Care Component to communicate about the Health Care Component’s acquisition of a new piece of the manufacturer’s diagnostic equipment, the Health Care Component may not use protected health information to do so without prior authorization.

In contrast, the Health Care Component would not be required to obtain prior authorization to use PHI to communicate about a new mammography suite, even if the Health Care Component received a grant from a breast cancer foundation to do so because the remuneration was not provided by or on behalf of the entity whose product or service is being described.

b. **Currently Prescribed Drugs or Biologics.** The Health Care Component may make communications regarding the generic equivalent of a currently prescribed drug, adherence communications that encourage an individual to take their prescribed medication, communications regarding all aspects of a drug delivery system relating to a currently prescribed drug or biologic, or refill reminders, in exchange for remuneration from a third party that would benefit from Tulane’s recommendation without authorization, so long as the amount of remuneration received by the Health Care Component, if any, covers only the costs of labor, supplies, and postage to make the communication. If remuneration is received in excess of these costs, the Health Care Component must obtain the individual’s authorization prior to making the communication. The Privacy Official or designee must approve the receipt and amount of remuneration prior to making the communication.

c. **Face-to-face Communications and Promotional Gifts.** Authorizations are not required for the use or disclosure of protected health information to make the following types of marketing communications, regardless of whether the Health Care Component receives remuneration:

A face-to-face communication made by the Health Care Component to an individual, which may consist of either an oral recommendation or written materials handed to an individual, but does not include telephone calls or mailings; or

A promotional gift of nominal value provided by the Health Care Component.