

Section 6	Compliance Policies	00/00/03	- Effective
Subject 6.2	Privacy and Disclosure		- Revised
			- Reviewed
<b>Policy 6.2.17</b>	<b>Use &amp; Disclosure of PHI for Marketing</b>	Compliance Office	- Author

## Use & Disclosure of PHI for Marketing

### Audience

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The information in this document applies to all UTMB faculty, staff, students, volunteers, and any other contractors or agents granted access to Protected Health Information (PHI).

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### Definitions

**Marketing** means:

1. To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made:
  - A. 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 UTMB, including communications about: the entities participating in the UTMB 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.
  - B. For treatment of the individual; or
  - C. For 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. An arrangement between UTMB and any other entity whereby UTMB discloses PHI to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service.

### Policy

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UTMB or its personnel may not disclose, use, sell or coerce an individual to consent to the disclosure, use, or sale of PHI for marketing purposes without the authorization of the patient or personal representative who is the subject of the PHI. This prohibition includes the disclosure, use or selling of prescription drug patterns. Certain marketing activities, as described below, do not require UTMB to obtain patient authorization for the use or disclosure of PHI.

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## Use & Disclosure of PHI for Marketing

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### Policy (cont'd)

UTMB personnel shall not disclose PHI to any non-affiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer, unless the patient has authorized the disclosure. A [UTMB authorization form](#) must be obtained for use and disclosure for marketing purposes. The content of the form may not be altered. If marketing is expected to result in direct or indirect remuneration to UTMB from a third party, UTMB must state the remuneration in the authorization form.

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### Exceptions

UTMB must obtain an authorization for marketing except when the communication is in the form of:

- face-to-face communication made by UTMB to the individual
  - promotional gift of nominal value provided by UTMB.
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### Written Marketing Communication

If the marketing communication is not face-to-face but in written form, UTMB must make a determination prior to sending out the marketing communication that the product or service being marketed may be beneficial to the health of the patient. In addition, UTMB is required to send envelopes to the patient that has only the addresses of the sender and the recipient and must:

1. State the name and toll free number of UTMB or the UTMB-affiliated entity sending the marketing information,
  2. Explain clearly the recipient's right to have his/her name removed from the sender's mailing list,
  3. If UTMB or UTMB-affiliate for marketing purposes receives a patient's request for removal from the mailing list, such removal must occur immediately, within FIVE days of receipt of request, and
  4. UTMB must explain in the communication why the patient has been targeted and how the product or service relates to their health.
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### Enforcement

All supervisors are responsible for enforcing this policy. Individuals who violate this policy will be subject to the appropriate and applicable disciplinary process, up to and including termination or dismissal.

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