



Institutional Handbook of Operating Procedures Policy 06.02.17	
Section: Compliance Policy	Responsible Vice President: Senior Vice President and General Counsel
Subject: Privacy	Responsible Entity: Office of Institutional Compliance

## **I. Title**

*Use and Disclosure of PHI for Marketing and Fundraising*

## **II. Policy**

Any and all uses or disclosure of PHI for marketing or fundraising purposes in compliance with this policy will be limited to the [minimum necessary](#) to achieve the purpose of the use or disclosure.

### **Marketing**

Generally, UTMB must obtain prior written authorization from a patient or patient's representative to use or disclose [Protected Healthcare Information \(PHI\)](#) for [marketing](#) communications. However, certain marketing activities, as described below, do not require UTMB to obtain patient authorization for the [use](#) or [disclosure](#) of PHI.

### **Fundraising**

UTMB may use or disclose limited PHI, including [demographic information](#), for the purpose of raising funds for its own benefit, without an authorization. However, information on opting out of fundraising communications must be provided.

Violation of this policy may result in disciplinary action up to and including termination for employees; a termination of employment relationship in the case of contractors or consultants; or suspension or expulsion in the case of a student. Additionally, individuals may be subject to loss of access privileges and civil and/or criminal prosecution.

## **III. Marketing**

### **A. Authorization Required**

Patient authorization is required for use and disclosure of PHI for marketing communications, unless the form of communication is exempt from authorization (exceptions below). Where UTMB receives [financial remuneration](#) for making communications the authorization shall disclose the fact that UTMB is receiving financial remuneration from a third party. The authorization must also state that the patient may revoke the authorization at any time.

### **B. Exceptions to Authorization Requirement**

The following forms of communication are excluded from the definition of marketing and *do not* require prior authorization for the use and disclosure of PHI:

#### **1. Face-to-face communication made to the patient for treatment or health care operations, including:**

- a. Communications made for treatment of the individual;
- b. Discussing case management or care coordination, including recommending

alternative treatments, therapies, providers, or care settings and communications to describe health related products and services; and

- c. Describing 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.
- d. Communications made over the phone, sent through mail or email do not constitute face to face communications and require individual authorization where UTMB receives financial remuneration in exchange for making the communications.

## **2. Promotional gift of nominal value provided by UTMB**

UTMB may provide promotional gifts of nominal value to patients, even if such items are distributed with the intent of encouraging the patient to use the products or services. For example, UTMB may send patients items such as pens, note-pads, and cups engraved with the UTMB logo.

## **3. Refill Reminders**

Refill reminders or other communication about a drug or biologic currently prescribed to the patient. This includes all aspects of the drug delivery system for self-administered drugs or biologics. For example:

- a. Communications about generic equivalent of a drug prescribed; and
- b. Communications related to encouraging individuals to take prescribed medications.

## **4. Communications promoting health in general that do not promote a product or service from a particular provider**

UTMB may communicate general health education or disease prevention material such as reminders for women to get an annual mammogram.

## **5. Communications about Government and Government Sponsored Programs**

UTMB may use and disclose PHI to communicate with individuals about eligibility for programs, such as Medicare, Medicaid, or the state programs without authorization.

## **6. Made at the oral request of the individual**

The communication must be limited in the scope of the oral permission and any further marketing communications must comply with this policy.

## **C. 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 the communication in an envelope to the patient that has only the names and 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; and

3. Explain in the communication why the patient has been targeted and how the product or service relates to their health.
4. If UTMB or a UTMB-affiliate for marketing purposes receives a patient's request for removal from the mailing list, such removal must occur, within 45 days of receipt of request.

**D. Third Parties**

1. 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. For example, UTMB personnel may not provide patient lists to pharmaceutical companies for use in promoting drugs to patients.
2. UTMB may engage a marketing firm to conduct permitted marketing activities on its 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 BA Agreement/Addendum would be required.

**IV. Fundraising**

**A. Fundraising Communications**

- a. UTMB may conduct fundraising activities including making fundraising communications to patients.
- b. Notice of Privacy Practices. UTMB will inform individuals in the Notice of Privacy Practices that they may be contacted as part of fundraising activities and that they have a right to opt out of receiving such communications.
- c. UTMB will not condition treatment or payment on an individual's choice to opt out of fundraising communications.

**B. Allowable Information**

UTMB personnel and affiliated fundraising associates may use the following information to make fundraising communications:

1. Demographic information, including:
  - a. Name
  - b. Address
  - c. Other contact information
  - d. Age
  - e. Date of Birth
  - f. Gender
2. Patients' dates of care;
3. Department of service information;
4. Treating physician;
5. Outcome information;
6. Health insurance status; and
7. Public information outside its internal database.

**C. Responsibilities of Fundraising Personnel**

UTMB personnel and affiliated fundraising associates must:

1. Include a clear and conspicuous opportunity to opt-out provision in each fundraising communication describing how individuals may opt out of receiving further fundraising materials.
2. Remove patient's information immediately from the mailing list upon receipt of an "opt out" clause; and

3. Sign an appropriate business associate contract before disclosing patient information to consultants or outside entities for fundraising activities (See IHOP Policy 6.1.4, *Business Associates With Access to PHI*). This contract is not necessary should UTMB employees or an institutionally related foundation perform the fundraising, which includes nonprofit foundations that raise only a portion of funds for UTMB.

**D. Prohibited Information**

The following information CANNOT be used *without authorization*:

1. Diagnosis
2. Nature of Services
3. Treatment

When a prospective contributor voluntarily discloses information about diagnosis and treatment to a member of UTMB's fundraising staff, that information can then be used for other fundraising purposes.

**V. Relevant Federal and State Statutes**

[45 C.F.R. 164.501](#)

[45 C.F.R. 164.502](#)

[45 C.F.R. 164.508](#)

[45 C.F.R. 164.514](#)

[45 C.F.R. 164.520](#)

[Chapter 181 of the Texas Health and Safety Code](#)

**VI. Dates Approved or Amended**

<i>Originated: 04/11/2003</i>	
<i>Reviewed with Changes</i>	<i>Reviewed without Changes</i>
08/13/2013	03/06/2017

**VII. Contact Information**

Office of Institutional Compliance  
(409) 747-8700