

Section 6 Subject 6.2	Compliance Policies Privacy Related	04/11/03- Originated 10/08/07 -Reviewed w/changes -Reviewed w/o changes
Policy 6.2.17	Use & Disclosure of PHI for Marketing	Compliance Office - Author

Use and Disclosure of PHI for Marketing

Definitions

Marketing:

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;
 - 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 including a communication by UTMB that encourages a change to a prescription drug included in UTMB's drug formulary or preferred drug list.
 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.
 3. Notwithstanding 1 (B and C), a product specific written communication to a consumer that encourages a change in a prescription drug or a prescription medical device.
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Policy

UTMB, in an effort to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), maintains that patient information must be kept private and confidential.

UTMB or its personnel must obtain a patient’s signed authorization with the UTMB authorization form to use or disclose Protected Healthcare Information (PHI) for all marketing communications. 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.

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.

However, certain marketing activities, as described below, do not require UTMB to obtain patient authorization for the use or disclosure of PHI.

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.

Exceptions

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

For disease management, health promotion, preventative care or part of a wellness program.

UTMB may communicate to patients its own health-related services and programs that promote good health. For example, UTMB may mail a flyer, describing a new UTMB weight loss program, to patients seen at UTMB over the past year who meet the definition of obese. UTMB may also communicate to patients general health education or disease prevention material such as reminders for women to get an annual mammogram. However, UTMB may not communicate and promote a specific product or service provided by an outside entity to patients such as a particular drug made by a pharmaceutical company to fight cholesterol.

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**Exceptions,
continued**

Face-to-face communication made by UTMB to the patient.

UTMB may discuss and recommend products and services by third parties in a face to face communication with the patient. In the course of a patient consult, a UTMB provider is allowed to recommend a particular product or service that may be beneficial to the treatment regimen of the patient. This could include recommending a particular product, pharmaceutical item or treatment service offered by a third party company.

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.

Made at the oral request of the individual.

UTMB may communicate and send to patients specific marketing material regarding products and services if the patient request information on a specific product or service. The marketing communication must be limited to the scope of the oral permission and any further marketing communication must comply with all other requirements state within this policy.

**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.

UTMB HANDBOOK OF OPERATING PROCEDURES

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4. If UTMB or a UTMB-affiliate for marketing purposes receives

**Written
Marketing
Communication,
continued**

a patient's request for removal from the mailing list, such
removal must occur, within 45 days of receipt of request.

Reference

45 C.F.R. 164.508

Chapter 181 of the Texas Health and Safety Code
