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North Sound Mental Health Administration

Section 2500 – Privacy: Marketing

Authorizing Source: RCW 70.02; 45 CFR 165 (HIPAA)

Cancels:

See Also:

Providers must have own “HIPAA & WAC compliant policy”

Responsible Staff: Privacy Officer

Approved by: Executive Director

Signature:

Date: 7/17/2013

POLICY #2508.00

SUBJECT: MARKETING

POLICY

It is the policy of the North Sound Mental Health Administration (NSMHA) to obtain authorization to use or disclose Protected Health Information (PHI) for marketing purposes if any marketing activities are undertaken, in compliance with the Privacy Rule of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 [*see* 45 CFR §§ 164.501, 164.508(a)(3)]. Currently, NSMHA does not engage in any marketing activities as defined by this policy.

DEFINITION

Per § 164.501, “marketing” is defined as:

1. Making a communication about a product or service that encourages recipients of the communication to purchase or use the product or service; or
2. An arrangement involving a Covered Entity, whereby PHI is disclosed by the Covered Entity in exchange for direct or indirect remuneration, so that the other entity or affiliate can make a communication that encourages the purchase or use of its own product or service.

The following are examples (though not an exclusive list) of situations that do **not** meet the definition of marketing:

1. Communications that are merely promoting good health and not about a specific product or service does not meet the definition of “marketing.” Thus, mailings reminding women to get an annual mammogram, or with information about how to lower cholesterol, about new developments in health care such as new diagnostic tools or about health or “wellness” classes, support groups and health fairs are permitted, and are not considered marketing.
2. Communications about government-sponsored programs do not fall within the definition of marketing. There is no commercial component to communications about benefits available through public programs. Thus, a Covered Entity is permitted to use/disclose PHI to communicate, for example, about eligibility for Medicare supplement benefits, or the State Children’s Health Insurance Program (SCHIP).
3. Covered Entities may make communications in newsletter format without authorization, so long as the content of such communication does not fit the definition of “marketing.”

Exceptions to the Scope of Marketing Activities, Such that Authorization for *Marketing* is Not Required

For purposes of HIPAA compliance, “marketing” does *not* include:

1. Oral or written communications that describe the NSMHA’s network or covered services;
2. Communications about treatment for the patient;
3. Communications about case management or care coordination, or recommendations of treatment alternatives and care options, including health care providers or settings of care.

The following are examples of these exceptions:

1. Covered Entities can convey information to beneficiaries and members about health insurance products offered by the Covered Entity that could enhance or substitute for existing health plan coverage. For example, if a child is about to become ineligible due to age for coverage under a family’s policy, this provision will allow the plan to send the family information about continuation coverage for the child. This does *not* extend to excepted benefits such as accident-only policies or to other lines of insurance.
2. Doctors can write a prescription or refer an individual to a specialist for follow-up tests, because these are communications about treatment.

ATTACHMENTS

2508.01 – Procedure: 2508-A