

VNS HEALTH CORPORATE POLICY & PROCEDURE

TITLE: HIPAA and Marketing

APPLIES TO: VNS Health Home Care, including the Home Care, and
Care Management Organization (CMO) divisions;
VNS Health Behavioral Health, Inc.;
VNS Health Personal Care;
VNS Health Health Plans;
VNS Health Hospice Care; and
Medical Care at Home, P.C. (collectively, "VNS Health")

POLICY OWNER: Corporate Compliance Department

FIRST ISSUED: August 9, 2005

NUMBER: HIPAA.10

PURPOSE:

The purpose of this Policy and Procedure is to ensure that VNS Health is in compliance with HIPAA's requirements regarding marketing. VNS Health's goal is to safeguard the confidentiality and integrity of protected health information ("PHI") and to protect against the unauthorized access to, or release of PHI.

POLICY:

HIPAA has specific rules about when VNS Health can use PHI (including the name, address, dates of service, or medical information of a patient or member) for marketing. When using PHI for marketing, VNS Health will take the following steps:

STEP 1: DETERMINE IF THE COMMUNICATION IS MARKETING

A. Definition and Exceptions.

"Marketing" is broadly defined as any communication (oral or written) about a product or service that encourages the recipients of the communication to purchase or use the product or service.

1. **Exceptions** to the Marketing definition, regardless of whether there is Financial Remuneration, as defined below, in exchange for the communication:

- a. A face-to-face communication between VNS Health personnel and the patient/member;

- b. Promotional gifts to the patient/member of nominal value provided by VNS Health (e.g., VNS Health can distribute pens, toothbrushes, or key chains with the name of VNS Health on them). However, please note that there are other laws, regulations and guidelines that may restrict the giving of such gifts, see, CCD.1 Code of Conduct policy.

2. **Not Included in Marketing Definition.** In addition, the following communications are considered to be made for health care operations or treatment purposes, and are not Marketing, as long as Financial Remuneration, as defined below, is not received from a third party in exchange for VNS Health communicating about the third party's services or products:

- a. Describing a health-related product or service (or payment for such product or service) that is provided by VNS Health, including communications about:
 - (i) VNS Health Providers participating in a health care provider network or health plan network;
 - (ii) Replacement of, or enhancements to, a health plan; or
 - (iii) Health-related products or services available only to a VNS Health Health Plans member that add value to, but are not part of, a plan of benefits;
- b. Communications about treatment of an individual;
- c. Case management or care coordination;
- d. Contacting a patient/member with information about treatment alternatives and related functions to the extent these activities do not fall within the definition of treatment;
- e. Communications that merely promote health in a general manner and do not promote a specific product or service;
- f. Communications to promote health fairs, wellness classes, support groups, and population-based activities to improve health or reduce health costs; and
- g. Sending information about government and government-sponsored programs (e.g., Medicaid, Medicare, etc.).

For the communications listed in Item 2, the rules for using or disclosing PHI for health care operations or treatment purposes should be followed. See, VNS Health Provider's Policy on Use and Disclosure of Patient Information and VNS Health Health Plan's Policy on Use and Disclosure of Member Information.

“Financial Remuneration” means direct or indirect payment to VNS Health or its business associate from or on behalf of a third party whose product or service is being described in exchange for making a communication about the third party’s product or service (i.e., to qualify as financial remuneration, the remuneration must be for the purpose making the communication).

Example: If a third party provides Financial Remuneration to a VNS Health in order for VNS Health to develop a disease management program, VNS Health can use PHI to inform patients/member about VNS Health’s disease management program because the Financial Remuneration was not received in exchange for making the communication and the communication was not about the third party’s products or services (i.e., the communication is about VNS Health’s disease management program). *In comparison*, if a third party provides Financial Remuneration in order for VNS Health to inform its patient/member’s about the third party’s disease management program, this would be considered Marketing and patient/member authorization would be required to use or disclose the patient/member information.

- a. Financial Remuneration does not include non-financial benefits, such as in-kind benefits, provided to a covered entity in exchange for making a communication about a product or service.
- b. VNS Health may provide refill reminders or communications about a drug or biologic currently being prescribed for the individual, even if Financial Remuneration is exchanged, provided that the Financial Remuneration provided in exchange for making the communication is reasonably related to VNS Health’s cost of making the communication (the costs of labor, supplies and postage to make the communication) and does not provide VNS Health with a profit.
- c. If Financial Remuneration is otherwise received by VNS Health in exchange for making a communication about a third party’s services or products, even if the communication would otherwise be considered to be health care operations or treatment as discussed in Section A.2 above, the communication is considered to be Marketing, and Step 2 below needs to be followed.

B. Determination of Not Marketing. If it is determined that the communication is not Marketing because one of the Exceptions is met and no prohibited Financial Remuneration is received, PHI can be used to make the communication consistent with VNS Health’s policies regarding health care operations and treatment.

STEP 2: OBTAIN PATIENT/MEMBER AUTHORIZATION

If it is determined in that a communication falls within the HIPAA definition of Marketing, VNS Health must obtain the patient’s or member’s written HIPAA authorization prior to using or disclosing the PHI for Marketing. If Marketing involves direct or indirect Financial Remuneration

to VNS Health from a third party, the authorization must state that VNS Health is receiving such Financial Remuneration.

Note: VNS Health may not give away or sell lists of patients or members for Marketing purposes without obtaining a HIPAA authorization from each patient or member on the list. If a business associate is engaged to assist VNS Health with Marketing (e.g., a telemarketer), VNS Health will require compliance (by the business associate) with all applicable HIPAA rules regarding marketing.

STEP 3: OBTAIN ADVICE IF UNSURE

In certain circumstances, it may be difficult to determine whether a particular communication is considered Marketing. Any questions regarding Marketing issues should be reviewed by VNS Health's Chief Compliance & Privacy Officer prior to making the communication.

REFERENCES:

45 CFR § 164.501; 45 CFR § 164.508(a)(3); 42 CFR §422.118, 42 CFR §423.136; CMS Medicare Marketing Guidelines

Reviewed:			9/2013	1/2015	11/2016	4/2018	12/2019
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