Are you in the correct place?

This is a training module on the HIPAA rules and regulations for fundraising and marketing activities.

• Did you access this module through Mlearning?
  – If yes: Continue with this module
  – If not: If you are associated with UMHS (University of Michigan Health System), and did NOT access this course through MLearning, you will not get credit unless you log into MLearning, and enroll in the course - **Log into Mlearning**, search for “HIPAA” and enroll in the **PRIV-10010, HIPAA: Marketing and Fundraising** course.

• If you DID access this through MLearning OR you are NOT associated with UMHS, continue with this module.
Is this the correct training module?

Before completing this module, based on your role/job responsibilities, you need to complete one of the following training modules:

- [HIPAA Basics](#)
- [HIPAA for Health Professionals](#) or
- [HIPAA for Researchers](#)

Click [here](#) to determine which of the above modules is appropriate for you.
Key points about the HIPAA and Marketing:

- Written permission (authorization) is required for all treatment and health care operations communications where UMHS receives financial remuneration for making the communication from a 3rd party whose product/service is being marketed. This authorization must disclose the financial remuneration.
Marketing defined by HIPAA

• HIPAA defines marketing as a communication about a product or service that encourages the recipient to purchase or use the product or service.

• Prior authorization is required before any sending any subsidized communication.

• A subsidized communication is direct financial reimbursement to UMHS by a 3rd party to market that 3rd party’s product or service.
Marketing defined by HIPAA

- Under HIPAA, authorization is not needed for these types of communications:
  - University of Michigan Health System’s own health-related products and services (provided directly by UMHS) [Here, there is no subsidized communication]
  - Face-to-face, in-person communication between the health care provider and the patient
Marketing defined by HIPAA

Now that we know what ISN’T marketing under HIPAA, let’s look at:

• What IS considered marketing under HIPAA?

And

• When do we need to get patient authorization prior to marketing to those patients?
Marketing defined by HIPAA

- You ARE Marketing but **DO NOT** need patient authorization to:
  - Have face-to-face communications between UMHS and a patient about a non-UMHS product or service, such as recommending an over-the-counter drug
  - Offer promotional gifts of nominal value from the UMHS to UMHS patients, such as a pen with the clinic name on it
  - Send refill reminders from the UMHS Pharmacy to patients
You ARE Marketing BUT NEED PATIENT AUTHORIZATION TO:

- Mail patients information about an independent cardiac facility (not affiliated with UMHS) offering baseline EKG’s for $39 when the communication is not for the purpose of providing treatment advice
- Send a drug manufacturer a list of patients so it can use the list to send patients discount coupons for a new medication
Marketing

• If a communication is marketing, **patient authorization is required**. You must:
  – Obtain prior written authorization from the patient;
  – Tell the patient if UMHS is receiving any money from the non-UMHS organization involved.
Marketing

- How does HIPAA apply to Wellness Programs?
  - Communications about disease management, health promotion, preventive care, wellness programs operated by UMHS directly or by a Business Associate on behalf of UMHS are **NOT** marketing because these are considered UMHS health-related services
  - UMHS may send information about support groups, organ donation, cancer prevention, health fairs, etc. without a written authorization from the patient
Now let’s consider

*Fundraising under HIPAA*
• **How HIPAA relates to fundraising:**
  – HIPAA defines fundraising as the use of PHI for the purpose of raising funds
  – When fundraising *by UMHS for UMHS*, we may use demographic data but not physical or mental health information (diagnosis info)
  – Using any PHI - even basic demographic info - for fundraising for an *outside entity (a non-UMHS entity including the University of Michigan)* requires prior written authorization by the patient
Fundraising & Demographic Data

Limited PHI can be used and disclosed for fundraising without Authorization which includes **Demographic Information and Limited Other Elements:**

- **Demographic Information:** An individual’s name, address, age, date of birth, gender, address, and other contact information

- **Limited Other Elements:** Insurance status, dates of service, department of service (e.g., cardiology) and outcome (e.g., death or sub-optimal result)

Note: An individual’s illness or treatment (diagnosis) cannot be used for fundraising
UMHS may contact UMHS patients for fundraising without patient authorization if:

- We are raising funds for UMHS; AND
- We use only demographic information and limited other elements; AND
- If our Notice of Privacy Practices tells patients UMHS may contact them for fundraising purposes and gives them an opportunity to opt out (Note: The UMHS Notice of Privacy Practices includes this information)
Fundraising Examples When Authorization Is Not Required

Fundraising that **DOES NOT** require patient authorization, for example:

- An appeal to all patients in a particular zip code
- An appeal to all male patients
- An appeal to all patients over age 50
- An appeal to all patients seen in the last six months
- ...*or any combination of those factors*
Test Yourself

Question:

Does a UMHS fundraising appeal to all female patients over the age of 60 who live in Washtenaw County who have been treated by UMHS in the past year require patient authorization?
Test Yourself

Answer: No.

Patient authorization for this fundraising appeal is not required because it uses only demographic data -- gender, age, hometown – and only the date services (in the past year) were provided. The patients were NOT identified by other PHI (e.g. diagnosis)
Fundraising That Requires Authorization

- Fundraising that **DOES** require authorization:
  - An appeal to patients based on a particular diagnosis (e.g., patients with breast cancer)
  - Any appeal to UMHS patients on behalf of another organization
Question:
Would it be a violation of HIPAA to send a fundraising appeal to all patients who had a kidney transplant without patient authorization?
Answer: Yes, this would violate HIPAA.

Creating a list of patients to send a fundraising appeal based on disease and treatment-specific information is a violation of HIPAA, unless each patient on the list has provided written authorization. The development officer is not allowed to use disease-specific information unless the provider has obtained authorization from the kidney transplant patients for fundraising.
Test Yourself

Question:

Would it be a violation of HIPAA for the department of surgery to pull a list of its patients treated within the last year using demographic information to send out a fundraising letter?
Answer: No, this would not violate HIPAA.

Creating a list of patients to send a fundraising appeal by a department, in this case the Department of Surgery, based on demographic information only is permissible under HIPAA and does not require authorization. So long as the list is not created using diagnosis-specific information, no authorization is required.

Note: Many UMHS departments have sub-divisions. UMHS Development Office must contact the UMHS Compliance Office for special consultation for this type of appeal.
Fundraising – Opt-Out Message

- All fundraising requests - even those that do not require patient authorization - must include information on how patients can opt out from future requests.

- Sample Opt-Out: "If you do not want to receive fundraising information in the future, please call (number) to have your name removed from the mailing list."
Marketing & Fundraising Combined

- Any marketing in which UMHS receives financial remuneration from a 3rd Party requires prior authorization.

- Communications that combine marketing (in which there is no 3rd party remuneration) and fundraising content must follow the rules on fundraising, which are more restrictive than the marketing rules.

- Combined communications may only be targeted based on demographics and limited other elements, unless we have written authorization from the patient to use other information.
Question:

The Cancer Center uses PHI to pull a list of breast cancer patients and subsequently sends this group a Health Care Communication in the form of a newsletter; the newsletter includes a remit envelope for donations to the Cancer Center.

Is this a violation of HIPAA?
Test Yourself

Answer: Yes, this violates HIPAA.

The Cancer Center treats a broad range of patients, including those with breast cancer. The Cancer Center cannot create a fundraising/development list of patients that is disease-specific (in this case, breast cancer) without patient authorization, even if it is inserted into a health care newsletter. The newsletter is allowed under HIPAA, but including a targeted fundraising appeal is a violation. The newsletter needs to be sent separately without a fundraising solicitation, unless the Cancer Center has obtained written patient authorization.
Question:

The Diabetes Center is asked to provide a list of former patients to the Juvenile Diabetes Foundation (JDF) which, in turn, will solicit the patients for gifts to the JDF.

Would this be a violation of HIPAA to provide a list of UMHS patients to JDF?
Answer: Yes, this would violate HIPAA.

The JDF is an outside entity and UMHS cannot disclose PHI to an outside entity for that entity to solicit funds or to market for itself. Written authorization from the UMHS patients would be required to disclose this to the JDF.
Questions?

- Please see http://www.med.umich.edu/u/hipaa if you have any questions about the Privacy Rule.