



# ***Use and Disclosure of Protected Health Information for Marketing Purposes Policy***

<b>Policy #:</b>	HP017.1
<b>Policy Type:</b>	University
<b>Responsible Executive:</b>	VP for Academic Affairs
<b>Responsible Office:</b>	Academic Affairs
<b>Originally Issued:</b>	November 8, 2023
<b>Latest Revision:</b>	November 8, 2023
<b>Effective Date:</b>	November 8, 2023

## **I. Policy Statement**

The University of Louisiana at Monroe’s (ULM) Use and Disclosure of Protected Health Information for Marketing Purposes Official Policy establishes the requirements to obtain an individual’s signed authorization and media release before using or disclosing the individual’s Protected Health Information for marketing purposes.

## **II. Purpose of Policy**

To provide guidance to the health care facilities and providers affiliated with ULM on the requirements of the Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information (HIPAA Privacy Regulations) for using or disclosing an individual’s Protected Health Information for marketing purposes.

## **III. Applicability**

This policy is applicable to all faculty and staff.

## **IV. Definitions**

Protected Health Information (sometimes referred to as “PHI”) – for purposes of this policy means individually identifiable health information, that relates to the past, present or future health care services provided to an individual. Examples of Protected Health Information include medical and billing records of the patient.

Authorization – A written document completed and signed by the individual that allows use and disclosure of PHI for purposes other than treatment, payment or health care operations.

Marketing – means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service. (see 45 CFR 164.501 for identification and explanation of items it does not include.)

Financial Remuneration – means direct or indirect payment from on or on behalf of a third party whose product or service is being described. Direct or indirect payment does not include any payment for treatment of an individual.

Privacy Officer – Person designated by the facilities and clinics as the Privacy Officer. This is the individual identified by ULM to be responsible for receiving and processing requests to receive communications of their Protected Health Information by alternative means or at alternative locations.

## **V. Policy Procedure**

### **1.0 Authorization Required for Use & Disclosure of PHI for Marketing**

1.1 ULM must obtain a patient's or personal representative's prior authorization and Media Release for any use and disclosure of PHI for marketing purposes except as specified in Section 2.0 below. An authorization must be specific as to the use and disclosure being requested and is not to be written in such a manner that it might be interpreted as a blanket authorization for the use and disclosure of PHI for marketing. A blanket marketing authorization is invalid.

1.1.1 To be valid, an authorization must include all of the core elements and required statements as detailed in the HIPAA Authorization Policy.

1.2 Business Associates – ULM may not disclose PHI to third parties for marketing purposes without authorization and media release from the patient, even if the third party is acting as the business associate of ULM.

## 2.0 Authorization Not Required for Use & Disclosure of PHI for Marketing Communications

2.1 ULM may use or disclose PHI for marketing without an authorization only if the communication is made in the form of:

- A face-to-face communication made by a covered entity to a patient or personal representative; or
- A promotional gift of nominal value provided by ULM.

## 3.0 Responsibilities

ULM must designate the personnel who are responsible for evaluating certain types of communications to patients and determining whether the communication meets the definition of "marketing" and therefore requires obtaining the patient's or personal representative's authorization for the marketing communication or purpose. (Note: Many communications with patients are for purposes other than marketing and it is not intended that this review process introduce any obstacles or hardships as it relates to treatment of the patient or access of the patient to quality health care.)

3.1 ULM must designate the personnel who are responsible for obtaining authorizations from patients for use and disclosure of PHI for marketing purposes.

3.2 ULM must designate the personnel who are responsible for determining whether a "promotional gift is of nominal value.

3.3 ULM must obtain business associate contracts with any business associates involved in the production, distribution, or processing of marketing communications that involve the use and disclosure of PHI.

## 4.0 Special Considerations

4.1 ULM's Own Uses - ULM may use PHI to communicate with individuals about ULM's own health-related products or services, the patient's treatment, or case management or care coordination for the individual, and may make the communication itself or use a business associate to do so.

4.2 Notice of Privacy Practices - ULM's Notice of Privacy Practices must include a statement that ULM may contact the patient to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to the patient. See HIPAA Notice of Privacy Practices Policy.

4.3 PHI is Not for Sale - Patient medical information should not be a commodity in the marketplace, and should not be made available for purchase or sale by any patient or entity.

4.4 Communications Promoting Health – A communication that merely promotes health in a general manner and does not promote a specific product or service from a particular provider does not meet the general definition of “marketing.” Such communications may include population-based activities to improve health or reduce health care costs as set forth in the definition of “health care operations.”

4.5 Therefore, communications such as mailings reminding women to get an annual mammogram, providing information about how to lower cholesterol, advising of new developments in health care, health or “wellness” classes, support groups, and health fairs, are permitted, and are not considered marketing.

4.6 Newsletters – ULM may make communications in newsletter format without authorization so long as the content of such communication is not “marketing” as defined for purposes of HIPAA.

## VI. Enforcement

The Vice President of Academic Affairs will be responsible for enforcement of this policy.

## VII. Policy Management

The Vice President of Academic Affairs will be responsible for enforcement of this policy.

## VIII. Exclusions

None

## IX. Effective Date

This policy is effective upon the date signed by the University President.

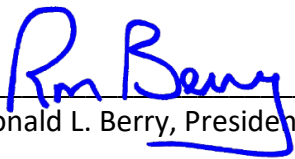
## X. Adoption

This policy is hereby adopted on this 8<sup>th</sup> day of November 2023.

Recommended for Approval by:

Approved by:

  
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Dr. Mark Arant, Provost

  
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Dr. Ronald L. Berry, President

## XI. Appendices, References and Related Materials

45 C.F.R. 164.508

## XII. Revision History

Original Adoption Date: November 8, 2023