

MARKETING ACTIVITIES
(45 CFR 164.514(e))

Applicability: Aspire Indiana and Aspire Indiana Health

PURPOSE:

The purpose of this policy is to provide direction regarding appropriate Use and Disclosures of PHI for marketing purposes.

POLICY:

1. General Policy

Aspire will not use or disclose PHI for marketing purposes, except as expressly permitted by this policy without an authorization that meets the requirements of Aspire's policy which addresses "Disclosures Requiring Authorizations".

2. Exceptions

The following exception does not apply to Drug and Alcohol Treatment Records and Psychotherapy Notes. Federal regulations at 42 CFR Part 2 do not permit disclosure of Drug and Alcohol Treatment Records for purposes described in this policy. Similarly, HIPAA does not permit Psychotherapy Notes to be disclosed pursuant to this policy.

Aspire will not be required to obtain an authorization as otherwise required by this policy and Aspire's policy which addresses "Disclosures Requiring Authorizations", and is used or disclosed to make a marketing communication to a client, as long as the use and disclosure occurs as part of a face-to-face communication between Aspire and the client.

3. Definition of Healthcare Operations

Communications to a client that encourage the client to purchase or use a product or service shall not be considered "Health Care Operations" and thus are not permissible without an authorization unless the communication is made for one of the following purposes:

- a. To describe a health related product or service or payment for such a product or service that is provided by Aspire.
- b. For treatment of the client

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- c. For case management or care coordination for the client in order to direct or to recommend alternative treatments, therapy, providers, or settings of care for the client. Neither Aspire nor an Aspire Business Associate may receive direct or indirect payment in exchange for making any communication as described above except:
 - (1) A Business Associate may receive payment from Aspire for making such a communication that is consistent with the Business Associate agreement.
 - (2) Aspire may receive payment in exchange for making such a communication if Aspire obtains a valid authorization from the client to do so.
4. Business Associates
5. Sale of PHI

For the purpose of this policy, Aspire may disclose PHI for purposes of such communications permitted by this policy to a Business Associate that assists Aspire with such communications, as long as the relationship between Aspire and the Business Associate complies with Aspire's "Business Associate" policy.

Federal law prohibits Aspire or its Business Associates from directly or indirectly receiving remuneration for any PHI of a person without a valid authorization from the individual. That authorization must include a statement regarding whether the PHI can be further exchanged for remuneration by the entity that receives the PHI.

Exceptions to this rule are made in limited circumstances per ARRA:

- Public health activities
- Research and price reflects cost of preparation and transmittal of data
- Treatment (unless prohibited by regulations)
- Health care operations (only for sale, transfer, merger or consolidation)
- Remuneration provided to Business Associates for activities involving exchange of PHI done by the Business Associate under the Business Associate Agreement.
- To provide individual with copy of PHI
- Any other exceptions permitted by regulations promulgated by the Secretary of the Department of Health and Human Services.

PROCEDURES:

1. Any decision to use or disclose PHI pursuant to this policy shall first be approved by the Aspire Privacy Officer or designee and the Chief Medical Officer.

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2. If the Privacy Officer/designee and Chief Medical officer determines that a proposed disclosure pursuant to this policy is appropriate, such decision shall be recorded on a “Documentation of Disclosure of PHI” form with copies scanned into the client’s medical record, Legal/ROI section.
3. If a client notifies Aspire of their decision to opt out of future marketing communications, Aspire’s Privacy officer/designee will be forwarded a copy of the client’s correspondence and will record the decision in the client’s medical record, Legal/ROI section and direct the appropriate Aspire personnel to remove the client from all appropriate marketing distribution and/or communication lists.
4. The Privacy Officer/designee and Chief Medical Officer may consult with Aspire’s legal counsel for any questions on laws or legal issues relating to any use or disclosure covered by this policy.

Approved: CCC – 6-15-11

Revised: CCC - 9-16-15