



HIPPA Privacy Rule Policies

Policies and Procedures	Policy # 24	
SALE OF PROTECTED HEALTH INFORMATION		
APPROVED BY:	ADOPTED:	
	REVISED: 07122017	
SUPERCEDES POLICY: NEW	REVIEWED: 07122017	

Purpose

To describe the circumstances under which LifeMed ID may sell Protected Health Information (PHI) in accordance with a valid Authorization and with state and federal privacy laws, HIPAA Regulations and LifeMed ID’s contracts with its customers.

Policy

It is the policy of LifeMed ID to protect PHI and to sell PHI only in accordance with a valid Authorization and state and federal privacy laws, HIPAA Regulations and LifeMed ID’s contracts with its customers.

All workforce members must comply with this policy. Violations of this policy will result in disciplinary action based on the seriousness of the offense or other factors. Disciplinary action may include written warning, suspension, or termination.

Definitions

“Customer” is an entity from which LifeMed ID receives PHI subject to a Business Associate Agreement (or other written agreement with the entity) in compliance with the HIPAA Regulations and approved by LifeMed ID’s legal counsel.

“Sale of Protected Health Information (PHI)” means a disclosure of PHI by a Covered Entity or Business Associate, where the Covered Entity or Business Associate, directly or indirectly, receives remuneration from or on behalf of the recipient of the PHI in exchange for the PHI. See 45 C.F.R. §164.502(a)(5) in the *Regulatory Authority* section of this Policy.

For definitions of other capitalized terms or phrases, please refer to: *HIPAA-HITECH Privacy and Security Glossary*.

Procedures

1. General Rule. LifeMed ID must obtain an authorization for any disclosure of PHI which is a sale of PHI and the authorization must state that the disclosure will result in remuneration to LifeMed ID. Refer to: *Privacy Policy #12: Authorization to Use or Disclose Protected Health Information*.
2. Activities That Are Not Considered a Sale of PHI. Unless applicable state law provides otherwise, or as noted below, sale of PHI does not include a disclosure of PHI:





- a. For public health purposes or as a Limited Data Set (Refer to: *Privacy Policy #17: Uses and Disclosures of Limited Data Sets* and *Privacy Policy #26: Other Permissible Uses and Disclosures*),
 - b. For research purposes where the only remuneration received by LifeMed ID is a reasonable cost-based fee to cover the cost to prepare and transmit the PHI for such purposes (Refer to: *Privacy Policy #26: Other Permissible Uses and Disclosures*),
 - c. To or by LifeMed ID for activities that LifeMed ID undertakes on behalf of a customer, or on behalf of LifeMed ID in the case of a subcontractor and the only remuneration provided is by the customer to LifeMed ID, or by LifeMed ID to the Subcontractor, if applicable, for the performance of such activities Associate (Refer to: *Privacy Policy #15: Uses and Disclosures to Subcontractors and Third Parties*),
 - d. To an individual, when the individual requests access to their PHI or an Accounting of Disclosures (Refer to: *Privacy Policy #9: Request for Access* and *Privacy Policy #11: Accounting of Disclosures*),
 - e. Required by law (Refer to: *Privacy Policy #25: Uses and Disclosures Required by Law*), and
 - f. For any other purpose permitted by and in accordance with the HIPAA Privacy Rule, where the only remuneration received by LifeMed ID is a reasonable, cost-based fee to cover the cost to prepare and transmit the PHI for such purpose or a fee otherwise expressly permitted by other law.
3. Responsibilities of the Privacy Officer. LifeMed ID's Privacy Officer, in consultation with legal counsel, is responsible for:
- a. Making determinations regarding the requirement to obtain an authorization for the proposed sale activity being considered (Refer to: *Privacy Policy #12: Authorization to Use or Disclose Protected Health Information*), and
 - b. Ensuring that the authorization discloses the fact that disclosure of the PHI will result in remuneration to LifeMed ID
4. Uses or Disclosures involving Subcontractors or Third Parties.

If LifeMed ID discloses PHI to a subcontractor or third party in accordance with a valid authorization for the Sale of PHI, LifeMed ID will ensure that each recipient agrees to use and re-disclose the PHI solely as expressly permitted in the individual's authorization evidenced by signing a Business Associate Agreement or other statement or agreement containing the following or similar wording:

"In consideration of receiving Protected Health Information, _____ (the "Recipient") agrees not to use the information for any purpose or in any manner other than as authorized by the individual. Unless the authorization expressly permits re-disclosure, the Recipient also agrees not to re-disclose the Protected Health Information (more than once) to anyone other than its own agents and employees, who will also be bound by this restriction. After the information is no longer needed for the purposes authorized by the individual, the Recipient will destroy the information in a manner that protects the individual's privacy and will, upon request, provide LifeMed ID with certification of such destruction."

Refer to: *Privacy Policy #15: Uses By and Disclosures to Subcontractors and Third Parties*. The subcontractor will agree not to engage in any sale of PHI unless it obtains a valid, written authorization as required by the HIPAA Privacy Rule. Refer to: *Privacy Policy #12: Authorization to Use or Disclose Protected Health Information*.

5. Accounting of Disclosures. Disclosures for purposes of a sale of PHI do not have to be included in an Accounting of Disclosures since they are made pursuant to the individual's written authorization.



Documentation

This version of the policy, together with any forms and other documentation created or obtained in accordance with the policy, will be retained by LifeMed ID for a period of at least 6 years plus the current year from the date of creation or the date when last in effect, whichever is later.



Regulatory Authority

45 C.F.R. §164.502 Uses and disclosures of protected health information: General rules.

(a) Standard. *A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.*

(5) Prohibited uses and disclosures.

(ii) Sale of protected health information:

(A) Except pursuant to and in compliance with § 164.508(a)(4), a covered entity or business associate may not sell protected health information.

(B) For purposes of this paragraph, sale of protected health information means:

(1) Except as provided in paragraph (a)(5)(ii)(B)(2) of this section, a disclosure of protected health information by a covered entity or business associate, if applicable, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information.

(2) Sale of protected health information does not include a disclosure of protected health information:

(i) For public health purposes pursuant to § 164.512(b) or § 164.514(e);

(ii) For research purposes pursuant to § 164.512(i) or § 164.514(e), where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes;

(iii) For treatment and payment purposes pursuant to § 164.506(a);

(iv) For the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence as described in paragraph (6)(iv) of the definition of health care operations and pursuant to § 164.506(a);

(v) To or by a business associate for activities that the business associate undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, pursuant to §§ 164.502(e) and 164.504(e), and the only remuneration provided is by the covered entity to the business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities;

(vi) To an individual, when requested under § 164.524 or § 164.528;



(vii) Required by law as permitted under § 164.512(a); and

(viii) For any other purpose permitted by and in accordance with the applicable requirements of this subpart, where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the protected health information for such purpose or a fee otherwise expressly permitted by other law.

45 C.F.R. §164.508 Uses and disclosures for which an authorization is required.

(a) Standard: authorizations for uses and disclosures

(1) Authorization required: general rule. Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.

(4) Authorization required: sale of protected health information.

(i) Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any disclosure of protected health information which is a sale of protected health information, as defined in § 164.501 of this subpart.

(ii) Such authorization must state that the disclosure will result in remuneration to the covered entity.



References

Internal

1. Privacy Policy #9, Request for Access
2. Privacy Policy #12, Authorization to Use or Disclose Protected Health Information
3. Privacy Policy #15, Uses By and Disclosures to Subcontractors and Third Parties
4. Privacy Policy #17, Uses and Disclosures of Limited Data Sets
5. Privacy Policy #25, Uses and Disclosures Required by Law
6. Privacy Policy #26, Other Permissible Uses and Disclosures

External

1. Omnibus Final Rule: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=a1031c979126e6440b522063b7bba578&rgn=div5&view=text&node=45:1.0.1.3.78&idno=45%20>