

	Privacy	Rio Grande Valley HIE	Policy: P13
	Effective Date 11/06/2015	Last Date Revised/Updated 11/06/2015	Date Board Approved: 11/06/2015
Subject: Marketing and Sale of PHI			

FEDERAL and STATE REGULATION:

- 45 CFR 164.508(a)(3), (a)(4)
- 45 CFR 164.514(f)(2)
- 45 CFR 164.501, definition of marketing and remuneration, treatment
- Texas Health & Safety Code § 181.153

Federal and State Law Definitions

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. 45 CFR 164.501, definition of marketing.

Marketing does not include a communication made:

- For treatment of an individual by a health care provider, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual, provided, however, that if the communication is in writing and the health care provider receives financial remuneration in exchange for making the communication, the requirements of 164.514(f)(2) are met:
 - Notice provided in Notice of Privacy Practices
 - Communication discloses fact that remuneration received and provides individual with opportunity to opt out of further communications that does not impose undue burden or cost.
- To provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual, only if any financial remuneration received by RGV HIE in exchange for making the communication is reasonably related to RGV HIE’s cost of making the communication.
- For the following health care operations activities, except where RGV HIE receives financial remuneration in exchange for making the communication:

- Certain communications describing health related products or services of health plans
- For case management or care coordination, contacting individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment.

Treatment means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of healthcare by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for healthcare from one health care provider to another. 45 CFR 164.501

Financial Remuneration means direct or indirect payment from or on behalf of a third party whose product or services is being described. Direct or indirect payment does not include any payment for treatment of an individual. 45 CFR 164.501, definition of financial remuneration.

Federal and State Law Requirements.

- RGV HIE may not disclose PHI to any other person in exchange for direct or indirect remuneration, except to another covered entity for treatment, payment, health care operations, and insurance or HMO function, or as otherwise required by state or federal law. Texas Health and Safety Code § 181.153(a)
- The direct or indirect remuneration a covered entity receives for making a disclosure of protected health information may not exceed the covered entity’s reasonable costs of preparing or transmitting the protected health information. Texas Health and Safety Code § 181.153(b)
- RGV HIE must obtain an authorization for any disclosure of protected health information for which the disclosure is in exchange for direct or indirect remuneration from or on behalf of the recipient of the protected health information. The authorization must state that the disclosure will result in remuneration to RGV HIE. 45 CFR 164.508(a)(4). This requirement does not apply to the following circumstances:
 - For public health purposes pursuant to § 164.512(b) or § 164.514(e)
 - For research purposes pursuant to §164.512(i) or §164.514(e), where the only remuneration received by the covered entity is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes
 - For treatment and payment purposes pursuant to § 164.506(a)
 - 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)

- To or by a business associate for activities that the business associate undertakes on behalf of a covered entity pursuant to §§ 164.502(e) and 164.504(e), and the only remuneration provided is by the covered entity to the business associate for the performance of such activities
- To an individual, when requested under § 164.524 or § 164.528
- Required by law as permitted under § 164.512(a)
- As allowed by HIPAA, where the only remuneration received by the covered entity 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.
- A face-to-face communication made by a covered entity to an individual; or a promotional gift of nominal value provided by the covered entity. 45 CFR 164.508(a)(3)

POLICY:

RGV HIE does not sell PHI for any purpose and would only engage in this activity when the Board and the provider contributing the data agreed that such exchange furthered RGV HIE's mission. RGV HIE does facilitate the sharing of PHI amongst participating providers for their use in treatment, payment, and healthcare operations, in exchange for service fees from these providers. If RGV HIE ever does sell PHI in accordance with federal and state law requirements, then any direct or indirect remuneration received would not exceed RGV HIE's reasonable costs of preparing or transmitting the PHI. For policies related to use of PHI for research, which may involve charging researchers for data, see RGV HIE Policy and Procedure, Use and Disclosure of PHI for Research.

RGV HIE may share PHI for purposes related to providing information about disease management services, subject to Board and provider approval and request reimbursement for such services in order to sustain itself as an organization to the extent allowable under state and federal laws. In some circumstances this may be defined as marketing under federal and state law. This marketing activity could involve contacting certain patients to inform them about disease management services, to the extent that RGV HIE members decide to become involved in community-wide disease management programs. As with the sale of PHI, RGV HIE will engage in this activity only after Board and participating provider agreement. In this instance, the BAA with the providers serving the patients to be contacted will be amended to reflect the use of PHI to identify and contact patients about these programs.

RGV HIE's authorization process will also apply to any sale of PHI for marketing purposes, so that patient authorization will be required to sell PHI or share PHI for marketing purposes.

PROCEDURE:

Prior to engaging in any activity that involves the sale of PHI for marketing, the RGV HIE Executive Director will obtain the approval of the RGV HIE Board of Directors and the provider contributing the impacted PHI. Notice will be provided to Board members and a vote will be taken in accordance with the procedures contained in the ByLaws of the RGV HIE Board of Directors. In addition, the RGV HIE Executive Director will obtain an amendment to the BAA with the impacted providers, as necessary, to reflect the use of PHI to identify and contact patients.

If RGV HIE mails information then RGV HIE will send envelopes to the patients that have only the addresses of the sender and the recipient. The envelopes must contain communication that states the name and number of RGV HIE or the RGV HIE program sending the marketing information and explains clearly the recipient's right to have his/her name removed from the mailing list. If RGV HIE or a RGV HIE program receives a patient's request for removal from the mailing list, such removal must occur immediately, within **five** days of the receipt of request, and RGV HIE must explain in the communication why the patient has been targeted and how the product or service relates to their health.

All contacts should be made in a manner consistent with the patient's request for confidential communications, if applicable. If the patient is contacted by phone, and the notification is left on an answering machine, caution should be used in what information is disclosed, as it is impossible to know who will listen to the voice message.