

POLICY INFORMATION

Policy Title: Uses and Disclosures of PHI for Marketing Purposes Policy and Procedure

Departmental Owner: Chief Compliance, Audit, and Privacy Officer

Version Effective Date: 2/28/24

Last Reviewed: 2/28/24

SCOPE

This policy applies to the following individuals and/or groups:

All of the below categories

All Employees CT Employees NY Employees Remote Employees Contractors Volunteers Students/Interns Vendors

This policy applies to all above listed Nuvance Health workforce members including but not limited to the following locations:

All of the below entities

Nuvance Health Systems

Danbury Hospital (including New Milford Hospital Campus)

Northern Dutchess Hospital

Norwalk Hospital

Putnam Hospital

Sharon Hospital

Vassar Brothers Medical Center

Health Quest Systems, Inc. "(HQSI)"

Health Quest Home Care, Inc

Hudson Valley Cardiovascular Practice, P.C. (aka The Heart Center) ("HVCP")

Other HQSI-affiliated Entities Not Listed

Western Connecticut Home Care, Inc ("WCHN")

Western Connecticut Health Network Physician Hospital Organization ACO, Inc.

Western Connecticut Home Care, Inc

Other WCHN-affiliated Entities Not Listed

Nuvance Health Medical Practices (NHMP PC, NHMP CT, ENYMS & HVCP)

POLICY STATEMENT/PURPOSE

The purpose of this policy is to provide guidelines for using and disclosing Protected Health Information ("PHI") for Marketing purposes.

DEFINITIONS

Definition of Marketing

1. To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made:
 - a. To provide refill reminders or otherwise communicate about a drug or biologic that is currently prescribed to the individual, but only if any financial remuneration received by Nuvance in exchange for making the communication is reasonably related to Nuvance's cost of making the communication;
 - b. By the Nuvance entity to describe health related products or services provided by the Nuvance entity, unless financial remuneration is received by Nuvance in exchange for making such communication;
 - c. For treatment of the individual, unless financial remuneration is received by Nuvance in exchange for making such communication; or

Original Effective Date: LHQ= 2/27/14

Revision Dates: 2/28/24

Supersedes: HQ 5.2.26 Uses and Disclosures of PHI for Marketing Purposes Policy;
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- d. For case management/care coordination or to direct or recommend alternative treatments, therapies, healthcare providers, or settings of care to an individual, unless financial remuneration is received by Nuvance in exchange for making such communication.
2. An arrangement between the Nuvance entity and any other non-Nuvance entity whereby the Nuvance entity discloses PHI to the other entity in exchange for direct or indirect remuneration for the other entity or its affiliate to make a communication about its own product or service that encourages recipients to purchase or use that product or service.

Covered Individual: This term refers to all Nuvance Health workforce members, business affiliates, and agents. Workforce members shall include any of the following individuals at Nuvance Health: Members of the Nuvance Health Board and the boards of any Nuvance Health related entity; President/Chief Executive Officer; administrators; managers, officers; employees, affiliates; medical staff members; appointees; volunteers; personnel; interns; students, trainees, and any individual whose conduct is under direct control of Nuvance Health whether or not they are paid by Nuvance Health. Business Affiliates shall include any non-workforce member, contractor, independent contractor, vendor, person, subcontractor or third-party, who or that, in acting on behalf of Nuvance Health: (i) delivers, furnishes, prescribes, directs, orders, authorizes, or otherwise provides Federal healthcare program items and services; (ii) performs billing or coding functions; (iii) contributes to Nuvance Health's entitlement to payment under Federal healthcare programs; and (iv) is affected by one or more of Nuvance Health's risk areas through the Business Affiliate's interaction with, or performance of their role, functions, and responsibilities or provision of contracted services at Nuvance Health. Agents include individuals or entities that have entered into an agency relationship with Nuvance Health. Agents fall under the category of either Workforce Member or Business Affiliate depending on their role, functions, and responsibilities.

POLICY

It is the policy of Nuvance Health and its affiliates ("Nuvance") to obtain a valid written authorization for the use, access or disclosure of PHI for purposes of marketing, unless the marketing communication is in the form of a face-to-face communication made by the Nuvance entity to the patient or a promotional gift of nominal value provided by the Nuvance entity. This policy applies to uses, access and disclosures made for marketing activities performed by an Nuvance entity or by a Business Associate on behalf of Nuvance, as well as uses, access and disclosures made in connection with the marketing activities of a third party. Nuvance follows the definitions and is in compliance with the HIPAA Privacy Rule of the Administrative Simplification provisions of HIPAA.

PROCEDURE

Nuvance has a process for reviewing the release of any PHI for marketing purposes with a valid authorization.

A. USING AND DISCLOSING PHI FOR MARKETING PURPOSES

1. Nuvance Covered Individuals shall obtain a valid written authorization for all communication, verbal or written, that constitute marketing activities unless included in the exceptions detailed in Section 3 below.
2. The following procedures will be followed when Nuvance requests permission to use, access, or disclose a patient's PHI for marketing purposes:
 - i. The authorization must be a valid written authorization as specified in the Nuvance's Release of Protected Health Information policy and will be maintained by the department obtaining authorization.

- ii. The authorization must specify that the requested use or disclosure is for the purpose of communications about products or services the patient may wish to purchase.
- iii. The authorization must contain an expiration date that reflects the conclusion of the specific marketing campaign for which the authorization is requested.
- iv. The authorization must indicate whether the marketing communication involves or does not involve direct or indirect remuneration (financial or in-kind compensation) to Nuvance.

B. MARKETING COMMUNICATIONS WITH AUTHORIZATION EXCEPTIONS

Note: the communications below are still considered marketing however fall within the Authorization exception. If you have any questions about a communication involving marketing, contact the Nuvance Compliance Officer.

1. Exceptions for the following are permitted only if Nuvance does NOT receive direct or indirect payment in exchange for the following communications:
 - i. A face-to-face communication with patients that promote a product or service such a physician providing a patient a brochure on a prosthetic company, or
 - ii. A promotional gift or gift of nominal value provided by Nuvance such a free package of baby formula, promotional pen, notepad, etc.
2. Exception for the following permits subsidized communications to be made without an Authorization:
 - i. A communication about a drug or biological that the patient is already taking, patient Authorization is not required provided the amount of money HG, or other provider receives to supply the list of patients is reasonably related to their respective cost of sending out the reminder. Example includes a prescription reminder.

C. COMMUNICATIONS NOT CONSIDERED MARKETING

Note: The following communications are not considered marketing and do not require an authorization ONLY if Nuvance does not receive financial remuneration in exchange for making the communication.

1. Communications for treatment by a healthcare provider, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, healthcare providers, or settings of care to the individual;
2. Communications to describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, a Covered Entity making the communication, including communications about: the entities participating in a healthcare provider network or health plan network; replacement of, or enhancements to, a health plan; and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits; or
3. Communications for case management or care coordination, contacting of individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment.

D. AUTHORIZATION REQUIRED: SALE OF PHI

1. Nuvance does not engage in the sale of PHI.
2. If Nuvance were to consider the sale of PHI, the Legal Department should be consulted.

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- i. Each individual must provide sign an authorization prior to the sale.
- ii. The authorization must state, if applicable, that the disclosure will result in remuneration to Nuvance.

RESPONSIBILITY

All Covered Individuals whose responsibilities are affected by this policy are expected to be familiar with the basic procedures and responsibilities created by this policy.


ENFORCEMENT

Failure to comply with this policy and related procedures will result in appropriate remedial and/or disciplinary actions, up to and including termination of any employment or other relationship.

REFERENCES

45 CFR, Parts 160 and 164
45 CFR 164.501
45 CFR 164.508(a)(3)
HITECH Act

APPROVAL

DocuSigned by:

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Signature

2/28/2024

Date