POLICY TITLE: HIPAA Marketing and Sale of Protected Health Information Policy	SYSTEM POLICY AND PROCEDURE MANUAL
POLICY #: 800.43	**CATEGORY:** Compliance & Ethics
System Approval Date: 1/17/2024 **Site Implementation Date:** 3/8/2024	**Effective Date:** 08/2013 **Last Reviewed/Approved:** 03/2022
Prepared by: Office of Corporate Compliance	**Notations:**

GENERAL STATEMENT of PURPOSE

To establish requirements for using Protected Health Information ("PHI") for Marketing purposes and for selling PHI.

POLICY STATEMENT

The Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rule prohibits Northwell Health ("Health System") from using PHI to send promotional communications paid for by third parties, except for refill reminders for which the Health System receives a cost-based fee. PHI will be used or disclosed for Marketing (as defined below) purposes only as specified in the process outlined below and as permitted by HIPAA. The Health System will not sell PHI, except as permitted by HIPAA. *Note: Marketing activities that do not involve uses or disclosures of PHI are not subject to HIPAA privacy regulations.*

SCOPE

This policy applies to all Northwell Health employees, as well as medical staff, volunteers, students, trainees, physician office staff, contractors, trustees and other persons performing work for or at Northwell Health; faculty and students of the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell or the Hofstra Northwell School of Nursing and Physician Assistant Studies conducting research on behalf of the Zucker School of Medicine on or at any Northwell Health facility.

DEFINITIONS

Business Associate (BA): A person or entity who creates, receives, maintains, processes or transmits PHI in performing a function or activity on behalf of Northwell Health, including, but not

limited to, claims processing or administration, utilization review, quality assurance, patient safety activities, billing, benefit management, practice management or repricing.

Examples of BA functions or activities can include, but are not limited to claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and software hosting of PHI. Examples of BA services include: legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, and financial.

If you have any questions regarding whether a person or entity's function qualifies as a BA, contact the Procurement office.

Marketing: "Marketing" is defined by HIPAA as making a communication about a product or service that encourages the recipient of the communication to purchase or use the product or service (with the exception of the communications listed below), or an arrangement between the Health System and any other entity where the Health System discloses PHI in exchange for direct or indirect payment so that the other entity can make a communication about its own product or service that encourages the recipient of the communication to use or purchase that product or service.

The following communications are specifically excepted from the definition of "Marketing," so long as the Health System does NOT receive financial remuneration in exchange for making the communication:

1. Communication for treatment, including case management or care coordination, or to direct or recommend alternative treatments, therapies, providers or settings of care; or
2. Communication to describe a health-related product or service provided by the Health System.

In addition, the following are NOT considered "Marketing:"

1. Face-to-face communications with the patient by the Health System, its providers and/or workforce;
2. Promotional gifts of a nominal value given to the patient by the Health System, its providers and/or workforce; and
3. Refill reminders or other communications about a drug or biologic currently being prescribed for the patient, so long as any financial remuneration received by the Health System for making the communication is reasonably related to the Health System's cost of making the communication.

Protected Health Information ("PHI"): Any oral, written, or electronic individually identifiable health information. PHI is information created or received by Northwell that (i) may relate to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual; and (ii) identifies the individual who is the subject or based on which there is a reasonable basis to believe that the individual who is the subject can be identified. The *Health Insurance Portability and Accountability Act* (HIPAA) further clarifies that PHI includes information that identifies the individual by one or more (depending on context) of the following 18 identifiers:

1. Names;
2. Geographic subdivisions smaller than a state, including street address, city, county, precinct, ZIP code, and their equivalent geocodes except for the initial three digits of a ZIP code in certain situations;
3. All elements of a date (except year) for dates directly related to an individual, including birth date, discharge date, date of death; and all ages over 89 and all elements of dates indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;
4. Telephone numbers;
5. Fax numbers;
6. Electronic mail addresses;
7. Social Security numbers;
8. Medical record numbers;
9. Health plan beneficiary numbers;
10. Account numbers;
11. Certificate/license numbers;
12. Vehicle identifiers and serial numbers;
13. Medical device identifiers;
14. Web Universal Resource Locators (URLs);
15. Internet Protocol (IP) address numbers;
16. Biometric identifiers, including finger and voice prints;
17. Full face photographic images and any comparable images; and
18. Any other unique identifying number, characteristic, or code.

Sale of PHI is defined as a disclosure of PHI by the Health System, or a Business Associate of the Health System, if applicable, where the Health System or its Business Associate directly or indirectly receives remuneration from or on behalf of the recipient of the PHI in exchange for the PHI.

A "sale of PHI" does NOT include a disclosure of PHI:

1. For public health purposes;
2. For research purposes, where the only remuneration received by the Health System or its Business Associate is a reasonable cost-based fee to cover the cost to prepare and transmit the PHI;
3. For treatment and payment purposes;
4. For the sale, transfer, merger or consolidation of all or part of the Health System and for related due diligence;
5. To or by a Business Associate for activities that the Business Associate undertakes on behalf of the Health System, and the only remuneration provided is by Health System to the Business Associate;
6. To the patient, when requested by the patient; or
7. For any other purpose permitted by the Privacy Rule where the only remuneration received by the Health System or its Business Associate 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 law.

PROCEDURE

Marketing

The Health System must obtain an individual's authorization using a HIPAA-compliant authorization form before using or disclosing the individual's PHI for Marketing purposes. Please find the Authorization for Release of Information (VD00l) form on the Vital Documents Platform or contact the Office of Corporate Compliance if you wish to obtain such an authorization.

Sale of PHI

The Health System must not sell PHI, unless it obtains a HIPAA-compliant authorization from the individuals who are the subject of the PHI being sold. Please contact the Office of the Corporate Compliance if you wish to obtain such an authorization.

Training

The Office of Corporate Compliance will provide training on HIPAA on, at least, an annual basis.

Sanctions

In compliance with HIPAA, violations of this policy will be subject to disciplinary action as outlined in the Human Resources Policy and Procedure Manual and in the Bylaws, Rules and Regulations of the Medical Staff.

Document Retention

Any documentation generated in compliance with this policy will be retained for a minimum of 6 years from the date of its creation.

Questions related to this policy should be directed to the Office of Corporate Compliance.

REFERENCES to REGULATIONS and/or OTHER RELATED POLICIES

- Final HIPAA Omnibus Rule (78 Fed. Reg. 5566)
- Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164
- Health Information Technology for Economic and Clinical Health (HITECH) Act, Title
- XIII of Division A and Title IV of Division B of the American Recovery and
- Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009)
- Northwell Health Human Resources Policy and Procedure Manual, Part 5, Discipline and Standards of Conduct
- Northwell Health Bylaws, Rules and Regulations of the Medical Staff

CLINICAL REFERENCES/PROFESSIONAL SOCIETY GUIDELINES
N/A

ATTACHMENTS
N/A

FORMS
https://secure.vitaldocs.cexpforms.com/

VD001 - Authorization for Release of Health Information

APPROVAL:	
Northwell Health Policy Committee	12/19/2023
System PICG/Clinical Operations Committee	1/17/2024

Standardized Versioning History:
Approvals: * =Northwell Health Policy Committee; ** = PICG/Clinical Operations Committee; ✠ = Provisional; ❖ = Expedited

*07/25/13;	**08/15/13,
*12/18/15	**01/21/16
✠ 04/26/18	**05/18/18
*04/23/20	**04/30/20
*02/24/22	**03/17/22

Northwell Health®

Authorization for Release of Health Information

Patient Name (Print)	Date of Birth
Patient Address (Print and include Apt#)	Telephone Number
	E-mail Address

1.

Contact information or health care provider or entity to release this information (from who):	
Name:	Address:
Phone #:	

2.

Contact information of person(s) or entities who will receive this information (to who):		
Name:	Address:	
Phone #:	Fax:	E-mail:

3.

Manner	**Form/Format**	**Delivery Details**
☐ Regular Mail	☐ Paper copy ☐ Secure USB Flash Drive ☐ CD	Mailing Address:
☐ Pick up at facility	☐ Paper copy ☐ Secure USB Flash Drive ☐ CD (where available)	N/A
☐ Electronic mail	☐ Secure email ☐ Unsecure email (By checking here, I acknowledge that e-mail sent unencrypted means others may be able to access the information and read it once it is transmitted over the internet.)	Email Address:
☐ Fax	N/A	Fax Number:
☐ Other	Please explain:	

Copy 1 – Patient Medical Record
Copy 2 – Patient or Patient's Personal Representative

VD001 (09/28/2021)

Northwell Health®

Authorization for Release of Health Information

4. **Verbal _____ PLEASE INITIAL HERE** to authorize the person or a representative from the entity specified in Section 1 to discuss the health information being released under this Authorization with the person, or representative from the entity, specified in Section 2. I understand that if this Authorization covers laboratory testing results, the laboratory CANNOT answer any questions in reference to interpretation, diagnosis or treatment of these results. Please address all questions with the PATIENT'S PHYSICIAN ONLY.

5. **Requested Health Information:**

   ☐ Medical Record Abstract (summary of record)

   ☐ Medical Record from (insert date) _____ to (insert date) _____

   ☐ Entire Medical Record

   ☐ Laboratory results for date of service _____

   ☐ Radiology images and reports for date of service _____

   ☐ Itemized bill for _____

   ☐ Other: Please explain _____

6. **Reason for release of information:**

   ☐ At request of individual ☐ Other: _____

7. **I, or my authorized representative, request that health information regarding my care and treatment be accessed, used and/or disclosed as stated on this form. In accordance with New York State Law, 42 CFR Part 2 and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:**

   a. I have the right to revoke this Authorization and my Permission to Send Information Requested by Unencrypted E-mail (if indicated in section 3 of this document) at any time by writing to the health care provider listed in Section 1. I understand that I may revoke this Authorization except to the extent that action has already been taken in reliance on this Authorization.

   b. I understand that signing this Authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.

   c. Information disclosed under this Authorization might be redisclosed by the recipient, and this redisclosure may no longer be protected by federal or state law. However, if I am authorizing the release of substance abuse treatment, mental health treatment or HIV-related information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law.

Northwell Health®

Authorization for Release of Health Information

8. The following types of information may be released <u>unless</u> you or your authorized representative initial in the appropriate spaces provided below to opt out of releasing these types of health information:

_____ Substance Abuse Treatment Information from an OASAS licensed unit or program[1] only (including diagnostic information, medications and dosages, lab tests, allergies, substance use history summaries, trauma history summary, employment information, living situation and social supports, and claims/encounter data)

_____ Mental Health Treatment information from an OMH licensed unit or program[2] only

_____ HIV-Related Information

9. <u>Expiration Date or Event</u>

This authorization will expire on (please check one and complete as applicable):
☐ One (1) year
☐ Other (please specify expiration date) _____
*This field must be completed with date or event

_____	_____	_____	_____	
Patient/Agent/Relative/Guardian* (Signature)	Date	Time	Print Name	Relationship if other than patient
_____	_____	_____		
Telephonic Interpreter's ID #	Date	Time		
OR				
_____	_____	_____	_____	
Signature: Interpreter	Date	Time	Print: Interpreter's Name and Relationship to Patient	
_____	_____	_____	_____	
Witness to signature (Signature)	Date	Time	Print Witness Name	

* The signature of the patient must be obtained unless the patient is an unemancipated minor under the age of 18 or is otherwise incapable of signing.

[1] Units or programs licensed by OASAS only include programs whose specific purpose is to treat substance abuse disorders.
[2] Units or programs licensed by OMH only include programs whose specific purpose is the treatment of mental Illness.

Copy 1 – Patient Medical Record
Copy 2 – Patient or Patient's Personal Representative

VD001 (09/28/2021)