
Title:	DPH Privacy and Security Manual
Chapter:	III. Use and Disclosure Policies, Marketing and Fundraising
Current Effective Date:	January 30, 2004
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Purpose

The purpose of the Division of Public Health (DPH) marketing and fundraising policy is to establish the DPH requirements regarding the disclosure of individually identifiable health information (IIHI) for purposes of marketing or fundraising activities. This policy is in compliance with the [DHHS Policy and Procedure Manual, Section VIII, Security and Privacy](#) that establishes the NC Department of Health and Human Services (DHHS) requirements for marketing and fundraising.

Policy Scope: *This policy and procedure applies to all DPH workgroups that serve clients, including:*

- *Covered health care components*
- *Internal business associates*
- *Non-covered DPH workgroups that serve clients and that maintain IIHI.*

Background

Marketing is defined as a communication about a product or a service, the purpose of which is to encourage clients to purchase or use the product or service. The following are examples of communications that are not considered marketing:

- Describing a product or service provided by the agency
- Reviewing treatment with a client
- Discussing case management or coordination of care
- Recommending alternative treatments.

Fundraising is defined as an organized activity of raising funds for an agency cause, including appeals for money and sponsorship of events.

Policy

Division workgroups and the Division workforce shall not disclose IIHI about clients without authorization, for marketing or fundraising purposes. Such authorization must include the specific reason for using the client's information.

Marketing

Division workgroups and the Division workforce shall not disclose, sell, or coerce a client to permit to disclosure of IIHI for marketing purposes without the authorization of the client who is the subject of the confidential information or the client's personal representative. This prohibition includes the disclosure, use, or selling of prescription drug patterns.

Exception: DPH workgroups and staff must obtain an authorization for marketing except when the communication is in the form of:

- Face-to-face communication made by an agency to a client
- Promotional gift of nominal value provided by DPH.

This provision allows the covered health care components to discuss products or services as well as provide sample products without restriction.

Program material and activities within public health that support public health's mission are not considered marketing. As examples, the following health care services are common communications that a client and the public generally expects to receive as part of his/her continued health care services or as part of public health awareness:

- Disease management information
- Wellness programs
- Nutritional information
- Alternative treatment methods and contacts
- Service coordination and case management
- Public health education and outreach
- Public health promotion and awareness campaigns
- Prescription refill and appointment reminders.

Note: Use of IIHI of clients used in public health promotions should be obtained with a valid client authorization; for example, the program should use a standard authorization to obtain the permission parents/guardians of children whose photographs are used in public health promotions and campaigns.

Fundraising

DPH workgroups and staff engaged in or performing any fundraising activities, including appeals for money and sponsorship of events, may internally *use* only dates of treatment and demographic information, unless the client or the client's personal representative gives authorization for more expansive use of the client's IIHI. Such demographic information that may be disclosed without authorization typically includes:

- Name
- Address
- Other contact information
- Age
- Gender
- Insurance status.

Disease-related information, such as "diagnosis", may not be used in fundraising. In addition, information about the component in which a client received services also cannot be used for fundraising purposes without the client's authorization if that information could reveal the nature of the diagnosis, service or treatment the client received.

If clients are ever allowed to participate in fund-raising activities (e.g., raffle to raise funds to help pay for an off campus trip for a patient care unit), the Division must ensure that the client's participation is voluntary. For incompetent clients, authorization from the client's guardian is required before the client can participate in such fund-raising activities.

The Division may *disclose* a client's dates of treatment and demographic information for fundraising purposes without the client's authorization only as follows:

- To a covered health care component's business associate, pursuant to a business associate agreement.
- To a Division-related foundation, unless prohibited by law.
- When clients are sent fundraising materials that include a description of how the client may **opt-out** from receiving any further fundraising communications.
- Reasonable efforts have been made to ensure that clients who decide to opt-out from receiving future fundraising materials are not sent any materials from that point forward.

Implementation

Any DPH workgroup that engages in marketing or fundraising activities must ensure that the following requirements are met:

- Authorizations: Authorization for the purposes of marketing and fundraising must meet the following requirements:
 - State that the purpose of the disclosure is for marketing or fundraising activities.
 - Denote whether the IIHI will be disclosed to a third party.

See the [DPH Privacy Policy, Use and Disclosures Policies, Authorizations](#) for requirements for DHHS Authorization.

- Notice of Privacy Practices: As the only covered health care component within the Division, the State Laboratory for Public Health shall include in its Notices of Privacy Practices a statement explaining that client individually identifiable health information may be disclosed for marketing or fundraising purposes. See the [DPH Privacy Policy, Client Rights Policies, Notice of Privacy Practices](#).
- Fundraising Materials: Fundraising materials must describe how an individual may opt out of receiving any further fundraising communications. Covered components must document a process for fulfilling those requests.
- Business Associate Agreements: DPH workgroups may enlist a third party to assist with marketing and fund raising. However, before disclosing IIHI to a third party, agencies must ensure that a Business Associate Addendum or a Memorandum of Understanding addendum has been executed and attached to the DHHS contract or MOU. See the [DPH Privacy Policy Business Associates Policy](#).

Reference: DHHS Directive Number III-11; DHHS Policy and Procedure Manual, Section VIII, Security and Privacy, 45 CFR 160.103, DPH HIPAA Compliance Statement, NC General Statutes 130A, 10 NCAC, NC General Statutes 58-39-75

For relevant forms:

Downloadable versions of the standard DPH approved Authorization forms are available at <http://www.schs.state.nc.us/hipaa/>.

Downloadable versions of the DHHS Authorizations Forms (dhhs-1000_authorizations and dhhs-1000sp_authorizations for the Spanish version) are also available on the DHHS Department-Wide Forms web site (<http://info.dhhs.state.nc.us/olm/forms/>).

For questions or clarification on any of the information contained in this policy, please contact the DPH Privacy Office at HIPAA.DPH@ncmail.net.