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SECTION: HIPAA

AREA: HIPAA PRIVACY/SECURITY POLICIES

SUBJECT: POLICY ON USE AND DISCLOSURE OF PHI FOR FUNDRAISING

PURPOSE

To establish guidelines and restrictions for the use and disclosure of Protected Health Information (“PHI”) in connection with all University of Arkansas for Medical Sciences (“UAMS”) Fundraising activities that are consistent with state and federal laws.

SCOPE

This policy applies to all UAMS physicians, employees, volunteers, resident/fellows, students, and other persons whose conduct, in the performance of work for UAMS, is under the direct control of UAMS, whether or not they are paid by UAMS.

DEFINITIONS

For purposes of this policy, the following definitions apply:

Authorization means a valid UAMS Health Insurance Portability and Accountability Act (“HIPAA”) compliant Authorization or a valid HIPAA Authorization that meets the required elements of the federal HIPAA regulations.

Business Associate is a person or entity who is not a member of the UAMS Workforce, and who performs or assists in the performance of a function or activity *for or on behalf of UAMS* which involves disclosures that are regulated and permitted by HIPAA and which involve the creation, use or disclosure of Protected Health Information (PHI) by the Business Associate.

Demographic Information shall be limited to the following types of information: (a) the patient’s name, address, and other contact information; (b) age; (c) gender; and (d) date of birth.

Fundraising means any activity relating to the efforts of raising funds for the institution of UAMS and its related healthcare facilities.

Institutionally Related Foundation means a foundation that qualifies as a non-profit charitable foundation under section 501(c)(3) of the Internal Revenue Code and has in its charter statement of charitable purposes an explicit linkage to UAMS. This does not include an organization with a general charitable purpose such as to support research about or to provide treatment for certain diseases that may give money to UAMS, even if some of its resources are given to UAMS, because its charitable purpose is not specific to UAMS.

Protected Health Information (“PHI”) means information that is part of an individual’s health information that identifies the individual or there is a reasonable basis to believe the information

could be used to identify the individual, including demographic information, and that (i) relates to the past, present or future physical or mental health or condition of the individual; (ii) relates to the provision of health care services to the individual; or (iii) relates to the past, present, or future payment for the provision of health care services to an individual. This includes PHI which is recorded or transmitted in any form or medium (verbally, or in writing, or electronically). PHI excludes health information maintained in educational records covered by the federal Family Educational Rights Privacy Act, health information about UAMS employees maintained by UAMS in its role as an employer and health information regarding a person who has been deceased for more than 50 years.

UAMS Workforce means for the purpose of this Policy, physicians, employees, volunteers, trainees, and other persons whose conduct, in their performance of work for UAMS, is under the direct control of UAMS, whether or not they are paid by UAMS.

To access any other terms or definitions referenced in this policy, refer to definitions posted on the UAMS HIPAA website at hipaa.uams.edu.

POLICY

UAMS respects the privacy of patients' information as well as the information of patient families. UAMS may not use or disclose a patient's PHI for Fundraising purposes without a signed HIPAA Authorization from the patient, except as allowed by federal and state law, including the Federal HIPAA Privacy Regulations.

For patients of the UAMS Substance Abuse Treatment Center or any other UAMS substance abuse treatment program, UAMS cannot disclose any PHI relating to the diagnosis, prognosis, treatment, or referral for treatment in relation to substance abuse (drug or alcohol), including any information which would identify the person as being a patient in such a program, or an acknowledgment or confirmation that the person is or was a patient in such a program. A signed HIPAA Authorization is not sufficient. Instead, a UAMS Substance Abuse Treatment Authorization form must be used and only under advice of General Counsel in consultation with the UAMS HIPAA Office. See *Administrative Guide Policy Use and Disclosure of PHI and Medical Records Policy, 2.1.13* for more information.

UAMS may not condition treatment or payment on the individual's choice with respect to the receipt of Fundraising communications.

UAMS will include opt-out opportunities in all of its Fundraising communications to instruct the recipient on how to opt out of receiving future communications related to Fundraising.

PROCEDURES

A. General Rule: An Authorization is Required for Use or Disclosure of PHI for Fundraising Purposes

Except as stated further in this policy, a patient's PHI may not be used or disclosed by UAMS for Fundraising purposes, without the patient's signed HIPAA authorization.

Diagnosis, nature of services, and treatment cannot be used or disclosed for Fundraising purposes without a signed HIPAA Authorization.

B. PHI Which Can Be Used or Disclosed For Fundraising Purposes

Subject to the restrictions stated above and in this Policy, UAMS may use, or disclose to a Business Associate or to an Institutionally Related Foundation, the following PHI for the purpose of including or excluding individuals from Fundraising efforts for the benefit of UAMS, without the need for a signed HIPAA Authorization:

1. Demographic Information as defined herein.
2. Dates of health care provided to a patient.
3. Information about the clinical department or unit where patient received services, such as neurology, orthopaedics and ophthalmology.
4. Name of Treating Physician.
5. "Outcome" information for purposes of screening and eliminating from fundraising solicitations those individuals who have died or who may have experienced any sub-optimal result of treatment or services.
6. Health insurance status.

EXAMPLES

Example 1:

Without a signed patient Authorization, it is not permissible to access, use or disclose the patient's diagnosis, nature of services or treatment. For example, a patient's diagnosis cannot be used to target a mailing to the patient for Fundraising purposes, such as obtaining a list of all patients who have Parkinson's disease.

Example 2:

It is permissible to use the name of a treating physician to obtain a list of the treating physician's patients, limited to the Demographic Information and other information which is permitted to be used or disclosed pursuant to HIPAA and this policy, for Fundraising purposes.

Example 3:

A physician wants to review a Fundraising mailing list to exclude patients who did not respond well to treatment. This would be allowed under "outcomes." The physician could let the UAMS Division of Institutional Advancement know which patients should be excluded based on poor outcomes. The physician could not, however, provide additional information or filter the list further based on patients' diagnoses or specific treatments or other information which is not permitted to be used or disclosed for Fundraising purposes.

Example 4:

A HIPAA Authorization is also required to publish a patient’s “story” and the HIPAA Authorization for this purpose may be obtained from the UAMS HIPAA website, the UAMS HIPAA Office or the UAMS Office of Communications and Marketing.

C. Public Information: UAMS may use the following information for Fundraising purposes:

- public information; or
- information obtained outside UAMS as permitted by law.

D. Opt-Out Provision in Fundraising Materials

With all Fundraising communications and materials, UAMS must provide a clear and conspicuous opportunity for the individual to elect not to receive any further Fundraising communications. Any appeals for funding, requests to sponsor events, or other Fundraising solicitations must include the opt-out language, including Fundraising communications made over the phone.

The methods provided for an individual to opt out of further Fundraising communications must not cause the individual to incur an undue burden or more than a nominal cost. UAMS has a toll-free number for persons to call and an email address designated for opting out of Fundraising communications. The toll-free number to opt out of Fundraising communications is 1-888-995-UAMS (8267), and the email address is advancement@uams.edu. The toll-free number and an email address are included in the UAMS Notice of Privacy Practices.

An example of opt-out language would be: “To opt out of future fundraising communications, please call 1-888-995-UAMS (8267) or send an email to advancements@uams.edu.”

In addition to a phone number and email address, a mailing address may be provided.

E. Compliance with Opt-Out

The UAMS Office of Institutional Advancement will manage the opt-out notices it receives, and UAMS employees who receive a verbal or written notice from a patient that they wish to opt out of future Fundraising communications must notify the Office of Institutional Advancement. The main number is (501) 686-8200 or send an email to advancement@uams.edu. The toll-free number for opting out is 1-888-995-8267.

Once an opt out notice, or a communication is received from a patient that they do not wish to receive any further fundraising communications, UAMS must comply.

When a person has opted out of Fundraising communications, but later makes a donation, the act of the donation does not serve to automatically add the individual back into the Fundraising communications. The person must specifically elect to opt back in.

UAMS may not condition treatment or payment on the individual’s choice with respect to the receipt of Fundraising communications.

UAMS may provide an individual who has elected not to receive further Fundraising communications with a method to opt back in to receive such communications.

F. Business Associate Agreement

UAMS will enter into an appropriate Business Associate Agreement pursuant to the *Administrative Guide Policy Business Associate Policy, 2.1.18* prior to disclosing any PHI (including the Demographic Information and dates of healthcare services described above) to an outside consultant or outside entity for Fundraising activities on behalf of UAMS. UAMS is not required to have a Business Associate Agreement with the University of Arkansas Foundation, Inc.; however, any and all disclosures of PHI to the University of Arkansas Foundation must otherwise meet the requirements of this policy on Use and Disclosure of PHI for Fundraising and the *Administrative Guide Policy Minimum Necessary Policy, 2.1.10*.

G. Statements in UAMS Notice of Privacy Practices

UAMS must include in its Notice of Privacy Practices a statement that it may use a patient's PHI to contact the individual to raise funds for UAMS.

SANCTIONS

Violation of this policy will result in disciplinary action in accordance with *Administrative Guide Policy 4.4.02, Employee Discipline* and *Administrative Guide Policy 2.1.42, HIPAA Sanctions*.

Signature:  _____

Date: October 14, 2020