

## HIPAA FAQ's

**QUESTION: Is it marketing for a health plan or provider to describe its own products or services?**

**Is it marketing for a covered entity to describe products or services that are provided by the covered entity to its patients, or to describe products or services that are included in the health plan's plan of benefits of the health plan?**

No. The HIPAA Privacy Rule excludes from the definition of "marketing" communications made to describe a covered entity's health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication. Thus, it would not be marketing for a physician who has developed a new anti-snore device to send a flyer describing it to all of her patients (whether or not each patient has actually sought treatment for snoring). Nor would it be marketing for an ophthalmologist or health plan to send existing patients or members discounts for eye-exams or eye-glasses available only to the patients and members. Similarly, it would not be marketing for an insurance plan to send its members a description of covered benefits, payment schedules, and claims procedures.

**QUESTION: Do I need an authorization to discuss or give products/services to patients in person?**

**Are health care providers required to seek a prior authorization before discussing a product or service with a patient, or giving a product or service to a patient, in a face-to-face encounter?**

No. In face-to-face encounters, the HIPAA Privacy Rule allows covered entities to give or discuss products or services, even when not health-related, to patients without a prior authorization. This exception prevents unnecessary intrusion into the doctor-patient relationship. Physicians may give out free pharmaceutical samples, regardless of their value. Similarly, hospitals may give infant supplies to new mothers. Moreover, the face-to-face exception would allow providers to leave general circulation materials in their offices for patients to pick up during office visits.

**QUESTION: Do I need authorization to target marketing communications to persons having a specific condition?**

**May covered entities use information regarding specific clinical conditions of individuals in order to communicate about products or services for such conditions without a prior authorization?**

Yes, if the communication is for the individual's treatment or for case management, care coordination, or the recommendation of alternative therapies. The HIPAA Privacy Rule permits the use of clinical information to the extent it is reasonably necessary for these communications. Similarly, population-based activities in the areas of health education or disease prevention are not considered marketing when they promote health in a general manner. Again clinical information may be used for such communications, such as in targeting a public education campaign.

Reprinted from  
United States Department of Health and Human Services  
Health Information Privacy and Civil Rights  
Questions & Answers