

HIPAA Compliance & Marketing Provisions



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Scope of Endorsement

- No charges allowed for required services except enrollment fee and negotiated prices
 - E.g., discounted prescription drugs, providing the differences in price between brand and generic, etc.
 - Negotiated price includes dispensing fee
- Non-required services allowed under endorsement include:
 - Products and services directly related to covered discount card drugs
 - Discounts for over-the-counter drugs
- Non-required services under endorsement must be offered for no additional fee

HIPAA Provisions

- Drug card sponsors are covered entities, and operations of the card are covered functions; as such, must comply with the HIPAA standards, implementation specifications, and requirements
 - Any activities performed outside of the scope of the program are not covered functions
 - Sponsors are business associates to CMS in the administration of transitional assistance
 - Does not change sponsor's relationship to HIPAA under other circumstances

Treated as Health Plan Under Privacy Rule

- HIPAA Privacy Regulation applies to endorsed sponsors in the same manner as it applies to health plans
 - Must provide notice only (no authorization) to beneficiaries of expected uses and disclosures of protected health information (PHI), as well as beneficiary's rights and the sponsor's duties with respect to that information;
 - Must communicate that PHI only to be used or disclosed to communicate about products and services inside the scope of endorsement

HIPAA Privacy Provisions

- HIPAA privacy enforced by HHS Office of Civil Rights
- For more HIPAA privacy information see:
 - <http://hhs.gov/ocr/hipaa>
- For info on all HIPAA Administrative Simplification provisions –
 - <http://www.cms.hhs.gov/hipaa/>
 - <http://www.aspe.hhs.gov/admnsimp/index.shtml>

Additional Marketing Provisions for Card Sponsors

- May only market products and services within scope of endorsement
- May not seek authorization for marketing or other activities outside the scope of the endorsement
- May not use any individually identifiable health information created, collected, or maintained to market following termination of endorsement or program

Additional Marketing Provisions, Cont.

- When sponsor organizations acting in another capacity (e.g., as health plan):
 - May not use PHI collected in sponsor role
 - May co-mingle information and outreach materials on drug card with other marketing materials

Record Retention Policy

- Required to retain all program information for at least six years after termination of the program
 - Continue to apply security and privacy protections after termination of program