

## **Can You Sell Protected Health Information (PHI) under HIPAA?**

The Health Information Technology for Economic and Clinical Health Act (HITECH) of 2009 made a number of modifications to the Health Insurance Portability and Accountability Act (HIPAA), including instituting new requirements on the use and disclosure of protected health information (PHI) for sale purposes. Under the omnibus final rule, issued on January 17, 2013, the sale of PHI is prohibited without an individual's prior authorization. A sale of PHI is defined as:

- Disclosure by a covered entity (CE) or business associate (BA) of PHI in exchange for direct or indirect remuneration from or on behalf of the recipient of the PHI; or
- Transfer of ownership or agreements to access, license, or lease the PHI (even without financial remuneration).

Remuneration includes:

- Direct remuneration;
- Indirect remuneration, including in-kind remuneration; and
- Non-financial benefits.

There are certain exceptions to the definition of sale of PHI, including:

- Public health activities;
- Research purposes;
- Treatment and payment activities;
- Sale, transfer, merger, or consolidation of a CE or BA;
- Providing access or an accounting to an individual;
- If required by law;
- A person or entity that creates, receives, maintains, or transmits PHI on behalf of a covered entity for purposes of a regulated function or activity (such as claims processing, data analysis, utilization review, quality assurance, and billing);
- A person or entity that provides legal, actuarial, accounting, consultation, data aggregation, management, administrative, accreditation, or financial services where the services involve disclosure of PHI; or
- As otherwise allowed under HIPAA, where a reasonable cost-based fee is paid.

Transactions that fall under one of these exceptions will not be considered "sale" of PHI.

A CE or BA may re-disclose PHI (that is, share or release health information that was received from another source) for remuneration only:

- If authorized by the patient in the original or an additional patient authorization; or
- If the re-disclosure meets an exception to the definition of sale of PHI.

For more information on state and federal laws related to privacy, see [www.healthinfo.org/topics/63](http://www.healthinfo.org/topics/63). For more information about HIPAA, see [www.healthinfo.org/federal-law/HIPAA](http://www.healthinfo.org/federal-law/HIPAA).

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