



## Oklahoma State University

<b>Title: Prohibited Uses and Disclosures</b>	<b>Policy #: PRV-01.04</b>
<b>Category: HIPAA Compliance</b>	<b>Authority: 45 CFR § HIPAA SECTION: 164.502(a)(5)</b>
<b>Standard: Uses and disclosures of protected health information: General rules</b>	<b>Responsibility: Health Care Components</b>
<b>Effective Date: 4/14/2003</b>	<b>Page 1 of 3</b>
<b>Approved By: OSU Legal Counsel</b>	<b>Revised: 7/1/2013</b>

### PURPOSE:

To identify the prohibited uses and disclosures of PHI.

### POLICY:

The following are prohibited actions under §164.502(a)(5):

1. *Use and disclosure of genetic information for underwriting purposes:* Notwithstanding any other provision of the Privacy Rule, a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of *health plan*, shall not use or disclose protected health information that is genetic information for underwriting purposes. For purposes of this paragraph, underwriting purposes means, with respect to a health plan: §164.502(a)(5)(i)

(A) Except as provided in paragraph B) of this section: §164.502(a)(5)(A)

(1) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy (including changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program); §164.502(a)(5)(i)(A)(1)

(2) The computation of premium or contribution amounts under the plan, coverage, or policy (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program); §164.502(a)(5)(i)(A)(2)

(3) The application of any pre-existing condition exclusion under the plan, coverage, or policy; and §164.502(a)(5)(i)(A)(3)

(4) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits. §164.502(a)(5)(i)(A)(4)



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(B) Underwriting purposes does not include determinations of medical appropriateness where an individual seeks a benefit under the plan, coverage, or policy. §164.502(a)(5)(i)(B)

(2) *Sale of protected health information: §164.502(a)(5)(ii)*

(A) Except pursuant to and in compliance with § 164.508(a)(4), a covered entity or business associate may not sell protected health information. §164.502(a)(5)(ii)(A)

(B) For purposes of this policy, sale of protected health information means: §164.502(a)(5)(ii)(B)

(1) Except as provided in the following paragraphs of this section, a disclosure of protected health information by a covered entity or business associate, if applicable, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information. §164.502(a)(5)(ii)(B)(1)

(2) Sale of protected health information does not include a disclosure of protected health information: §164.502(a)(5)(ii)(B)(2)

(i) For public health purposes pursuant to § 164.512(b) Uses and Disclosures for Public Health Activities or § 164.514(e) Limited Data Set;  
§164.502(a)(5)(ii)(B)(2)(i)

(ii) For research purposes pursuant to § 164.512(i) Uses and Disclosures for Research Purposes or § 164.514(e) Limited Data Set, where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes;  
§164.502(a)(5)(ii)(B)(2)(ii)

(iii) For treatment and payment purposes pursuant to § 164.506(a) Permitted Uses and Disclosures; §164.502(a)(5)(ii)(B)(2)(iii)

(iv) For the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence as described in paragraph (6)(iv) of the definition of



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health care operations and pursuant to § 164.506(a) Permitted Uses and Disclosures;  
*§164.502(a)(5)(ii)(B)(2)(iv)*

(v) To or by a business associate for activities that the business associate undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, pursuant to §§ 164.502(e) Disclosures to Business Associates and 164.504(e) Business Associate Contracts, and the only remuneration provided is by the covered entity to the business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities;  
*§164.502(a)(5)(ii)(B)(2)(v)*

(vi) To an individual, when requested under § 164.524 Access of Individuals to protected health information or § 164.528 Accounting of Disclosures of PHI;  
*§164.502(a)(5)(ii)(B)(2)(vi)*

(vii) Required by law as permitted under § 164.512(a) Uses and Disclosures Required by Law; and *§164.502(a)(5)(ii)(B)(2)(vii)*

(viii) For any other purpose permitted by and in accordance with the applicable requirements of the Privacy Rule, where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the protected health information for such purpose or a fee otherwise expressly permitted by other law. *§164.502(a)(5)(ii)(B)(2)(viii)*

### PROCEDURE:

OSU will not use any PHI, including the Use and Disclosure of Genetic Information for underwriting purposes, nor will OSU sell PHI in any way that is prohibited by law.