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in a Moment

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HIPAA & Marketing

November 8, 2011





DMA Ethics and Compliance Update

- **COPPA: Protecting Children**
 - December 13th
- **Personal Information Collection and Use Reminders**
 - January 10, 2012
- **Other Upcoming topics**
 - Environmental best practices and DMA initiatives
 - Online Marketing: OBA and online advertising
 - Data Security – protecting information in your care

Sponsored by:



Today's Speakers



- » **Senny Boone**
 - SVP Corporate & Social Responsibility



- » **Jerry Cerasale**
 - SVP Government Affairs



- » **Emilio "Milo" Cividanes**
 - Venable



HEALTH INFORMATION PRIVACY

HIPAA

- » Health Insurance Portability and Accountability Act of 1996 protects privacy of personal health care records by protecting security & confidentiality of healthcare information.



HIPAA

- » HIPAA's privacy provisions require covered entities and their business associates to comply with lengthy documentation requirements and adhere to privacy and security requirements.
- » “Covered” are health plans, healthcare clearinghouses, healthcare providers who transmit information.

HIPAA

“Business associates” of covered entities are those who perform functions on their behalf or have access to the protected information.



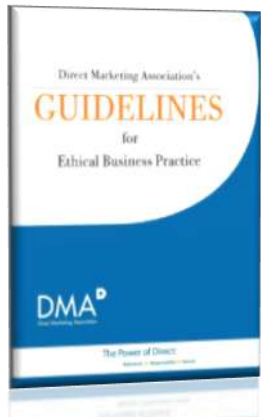
HIPAA

- » Covered entities must receive written, explicit authorization from an individual to use or disclose protected health information for marketing or fundraising.
- » Pii health data includes: name, specific dates (birth date, treatment, discharge...) Social Security, phone, medical record numbers, photographs, geographic id's



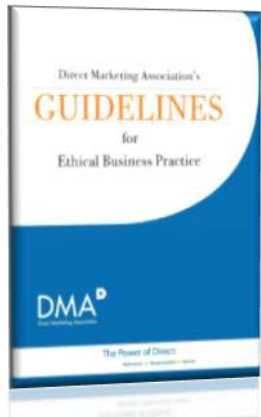
HIPAA & DMA Guidelines

- » DMA Guidelines cover marketing aspects:
www.dmaresponsibility.org/Guidelines/
- » Article #33 applies to health related data:
 - Illnesses or conditions, treatments (drugs, devices), treatments received from doctors



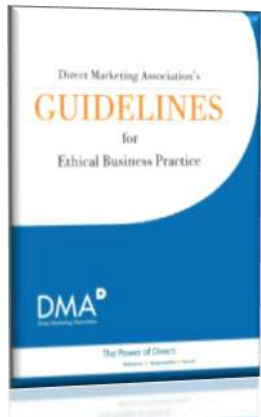
HIPAA & DMA Guidelines

- » Who: any individual or entity that collects, maintains, uses and/or transfers health-related data
- » Nonprofit and for-profit



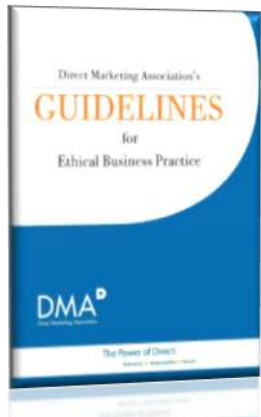
HIPAA & DMA Guidelines

- » No transfer of pii health data (in context of relationship) for marketing purpose without prior consent of consumer.
- » Health data can't be used to contact consumers for marketing without a clear notice of use of data and opt-out opportunity.



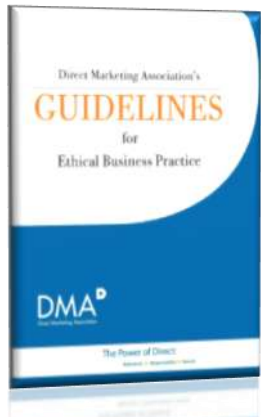
HIPAA & DMA Guidelines

- » Pii health related data volunteered by a consumer (outside of the relationship between consumer and provider) is also considered sensitive & personal. No collection, retention, use or transfer
 - » Unless there is, at time of collection, notice, consent to transfer for third party use, name of collecting org. & an opt out.



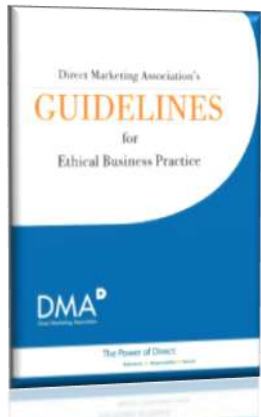
HIPAA & DMA Guidelines

- » Notice should be clear, easy to find.
(Example of survey form)
- » Inferred health-related pii (gathered outside of the relationship between a provider and consumer) is also sensitive.
 - » This is based on purchasing behavior and entities must give notice and opportunity to opt-out of third part transfer.



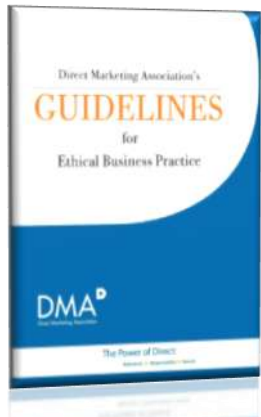
HIPAA & DMA Guidelines

- » Marketers using pii health data should provide source of data upon request and proper identification by the consumer.
- » No requirement for consumer to trade health pii in exchange for insurance coverage, treatment or information



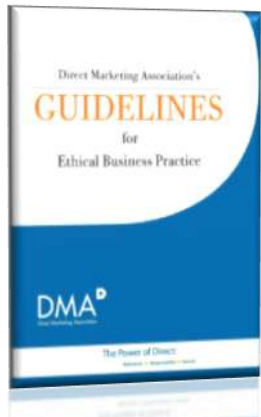
HIPAA & DMA Guidelines

- » Health information requires more data security-built in safeguards, if information is being transferred, the transferror should ensure strict security measures.
- » DMA guidelines do not restrict use of non-pii health data for research or other uses.



HIPAA & DMA Guidelines

- » Marketing data should only be used for marketing purposes.
- » HIPAA requires “covered entities” to document their privacy policies & procedures. Lengthy use and disclosure requirements, notice of privacy practices.



HIPAA

- » HIPAA and recent changes
 - HITECH of 2009
- » U.S. Department of Health & Human Services regulation



HIPAA

- » HIPAA privacy policy items
- » Required notice of privacy practices
- » Sharing of protected health information
- » Retention of protected health information



HIPAA

- » Requirements in the event of a privacy or security breach



HIPAA

- » Recent court decisions
- » Sorrell v. IMS Health (US Supreme Court ruling in June of 2011)



HIPAA and future regulation

- » Congress
- » Federal (HHS)
- » Emerging issues due to user-provided and shared health-information



QUESTIONS?

RESOURCES:

DMARESPONSIBILITY.ORG

DMAACTION.ORG

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THANK YOU!