

**MYTH:** A health care provider cannot sell an individual's protected health information (PHI).

**FACT:** Under the HITECH Act's amendments to HIPAA, a health care provider may sell an individual's PHI with an individual's written authorization or if the sale falls under an exception to the definition of sale of PHI.

The Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH)<sup>1</sup> made several modifications to HIPAA. These changes were codified in the omnibus Final Rule published by HHS on January 17, 2013.<sup>2</sup> One of the most significant changes was requiring a covered entity or business associate to obtain a valid written authorization consenting to the sale from the person who is the subject of the protected health information.<sup>3</sup>

Under the HITECH amendments, covered entities will be required to obtain authorization if the covered entity receives direct or indirect remuneration (money or some other benefit) in exchange for the PHI. However, the exchange is not considered a sale when the exchange is for one of the following purposes:<sup>4</sup>

- Public health activities (such as reporting of communicable diseases);
- Research purposes, as long as the price charged reflects the cost of preparation and transmittal of the information for research purposes;
- Treatment and payment purposes (such as processing insurance claims);
- The sale, transfer, merger or consolidation of all or part of a covered entity;
- Services rendered by a business associate pursuant to a business associate agreement and at the request of the covered entity (such as a medical records transcription service);
- Providing an individual with access to his or her protected health information or an accounting of disclosures pursuant to the law; and

- Disclosures required by law (such as federal program requirements, like Medicare audits to identify fraud).

Examples:

- A physician sells a list of patients suffering from a certain condition or taking certain types of medications to a pharmaceutical company, which will send coupons directly to the patients. This activity constitutes a sale of PHI. Patient authorization is required before the physician may provide the list.
- A physician gives a patient their medical records upon request but charges a reasonable fee for copying the records. This activity is not a sale.

**For More Information:**

- [Learn](#) about state and federal laws related to privacy.
- [Read](#) our overview of HIPAA and related resources.

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<sup>1</sup> American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009), Division A, Title XIII and Division B, Title IV, Health Information Technology for Economic and Clinical Health Act (HITECH Act) (codified at 42 U.S.C. § 17930, et seq).

<sup>2</sup> 78 Fed. Reg. 5566 (January 25, 2013) (to be codified at 45 CFR pts 160 and 164).

<sup>3</sup> HITECH Act, §13405(d); 45 C.F.R. § 164.508; 78 Fed. Reg at 5606.

<sup>4</sup> 45 C.F.R. §§ 164.502(a)(5)(ii)(B)(2).