

Suggested Guidance and Policy for Retaining PII

3/9/16

Although there is a general requirement to provide a written privacy notice statement prior to collecting PII or other information from Consumers, this provision does not require Navigators and CAC's to provide a written privacy notice statement to Consumers prior to collecting a Consumer's name, physical address, e-mail address, or telephone number, so long as such information will be used solely for the purpose of making subsequent contact (follow-up) with the Consumer. Subsequent contact should always include, but is not limited to:

- 1) Any Non-Exchange Entity Authorized Function
- 2) Consumer educational information that is directly relevant to Authorized Functions.
- 3) Any future Authorized functions as written by CMS/HHS (You may be aware of new regulations requiring some assisters to provide post-enrollment assistance, this would be an example here)

However, names, physical addresses, e-mail addresses, or telephone numbers are still considered PII and Navigators and CAC's must still comply with all privacy and security standards and requirements outlined in agreements between their organizations and CMS, between the assister and the organization, and outlined in the consumer consent form. It is important to remember, Consumers must have a choice in how their PII is generated and used. Assisters must give Consumers a reasonable opportunity to make informed decisions about the creation, disclosure, access, and use of their PII. This requires obtaining informed consent when using PII and the consent form must be written in plain language and provide specific terms for the use of PII. The consent must identify who is collecting the PII and what the PII will be used for, and provide the individual with the ability to revoke consent. Informed consent must:

- 1) Be provided in specific terms and in plain language;
- 2) Identify who will obtain access to the Consumer's information under the terms of the informed consent;
- 3) Describe the purpose for which the informed consent is being obtained;
- 4) Explain what information the assister will use or disclose to a specific recipient(s);
- 5) Provide notice of a Consumer's ability to revoke the consent at any time; and
- 6) Include an expiration date or event, unless effectively revoked in writing by the Consumer before that date or event.

Important:

1. PII cannot be used to facilitate adverse benefit determinations or to discourage individuals with significant health problems from enrolling in a plan. Non-Exchange entities should also avoid obtaining information on individuals not seeking coverage, especially social security numbers and information regarding citizenship status.
2. Along with creating awareness and consent for new uses of PII, such as the tracking sheet for follow-up purposes, data privacy and security standards should be implemented in a manner that ensures accountability for new methods of storing PII. Non-Exchange entities must adopt policies that put in place safeguards to ensure integrity and prevent unauthorized use.

Examples of how consent forms can use plain language and clearly outline intent of use regarding PII

1. *Because I have a relationship with [Name], [Name] is allowed to come to my door and/or to call me directly to provide application or enrollment help, so long as [Name] follows other laws that might apply to that activity.*
2. *If I give my contact information when signing this form, my general consent includes permission for [Name] to follow up with me about [Authorized Function(s)] after my first meeting with them.*

Please complete, sign, and date the form:

Date _____	
Consumer/Consumer's Legal or Marketplace Authorized Representative Signature. Circle one of these to show if you are the consumer or the consumer's representative. PLEASE NOTE: Consumers may sign this consent form themselves, or may choose to have a legal or Marketplace Authorized Representative sign it.	
_____	_____
Printed Consumer Name	Printed Authorized Representative Name (if applicable)
Ways I agree to be contacted (optional):	
___ By mail or in-person at _____	
___ By phone at _____ (XXX) XXX-XXXX	
___ By text message at _____ (XXX) XXX-XXXX [Note: to the extent a CAC entity wishes to contact individuals on their cell phones or via text message, it should obtain individual legal advice on what the consent language should say.]	
___ By email at _____ XXXXX@XXXXX.XXX	

In the highlighted portion, include activities you would like to follow up with them about; i.e. health insurance literacy, post-enrollment/re-enrollment assistance, relevant education.

Notice you clearly state your name and use, which is sufficient disclosure for collecting and storing PII for making subsequent contact. Since this collection of PII is expressly for follow-up purposes you do not need to explain how it will be stored and secured in writing, as noted in the beginning of this guidance. Only PII you collect to provide application assistance, or other functions, is required to include a privacy statement addressing how you create, collect, disclose, access, maintain, and store PII for that function.