



Unleash Social Media's Engagement Power,  
While Protecting Consumer Privacy

## Webinar

**Social Media for Healthcare:**

**Optimizing Opportunities, Overcoming Legal Risks**

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# Speaker Bios



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Introduction



Social Media Overview



Privacy in Digital Advertising, Generally



Privacy and Digital Advertising for Healthcare



Suggested Approaches for Developing a Social Media Program

# Engagement at the Convergence of Technology Innovation

Patient engagement is top of mind for most healthcare organizations. Mobile and internet technologies are integral to engagement efforts.

1

## Mobile Devices and Apps

More security features:

- end-to-end encryption
- biometric locking
- two-step authentication
- Ability to minimize personal health data on network servers

2

## Internet

More personalization, powered by big data

3

## Social Media

Emerging channel of communication with companies using voice, text and video

- On demand
- Consumer-initiated
- 1-to-1 or group
- In some cases, private

Consumers expect more frictionless – and at their option, private – engagement



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# Social Media Use by Adults in the U.S., 2015

Pew Research Center, Annual Survey

**68%**

## U.S. adults use social media

Used to connect with friends and family, shop, get news and search for information

### Relatively uniform use across racial, ethnic and gender categories

- 62% for men vs 68% for women
- 65% for Caucasians and Hispanics
- 56% for African Americans

**56%**

of lowest income households

**35%**

Of adults ages 65 and older

# Social Media Fulfills A Demand for Health Information

75%

U.S. adults who go online

75%

Online users who search for health information, including healthcare professionals

According to a survey published by PwC

46%

Reported that social media would affect their choice of provider

25%

discussed a health related experience

20%

joined a health community or forum

Sources: Pew and PwC HRI Social Media Consumer Survey, 2012

# Potential Consumer Reach

**\$60 Billion**

U.S. revenue from digital advertising  
in 2015

**67%**

of all digital advertising revenues  
are paid to Facebook

Facebook users spend  
an average of

**20 min**

a day on the site



**1.49B**

monthly active users on  
Facebook

IAB, eMarketeer, Facebook (Quarterly Earnings Reported July 2016:

# Do HIPAA Covered Entities Use Social Media?

Yes – Mayo Clinic’s Center for Social Media reports how many hospitals in different states are on social media.



**1,600**

hospitals are on social media



**50%**

of these hospitals are in 10 states



Active across social media platforms:  
**YouTube, Facebook, Twitter, LinkedIn, 4Square, and Blogs**

Source: Mayo Clinic Social Media Network

# Reasons to Make Social Media Work



## Growth

Consumer engagement is key to patient acquisition, satisfaction and retention. Use social media to build lifetime customer value and experience the force-multiplying effects of social networks.



## Population Health

The shift to value-based care places greater emphasis on preventive health, wellness, chronic disease management and helping consumers access benefits and services at the right time and in the right setting



## Hard-to-Reach Populations

Social media offer a variety of familiar, accessible and proven channels for healthcare organizations to target and engage uninsured, underserved and other hard-to-reach populations



## Literacy

Patients with access to reliable health information can become more empowered participants in their own health and care



## Push

### Sponsored content

- Advertisements
- Homepages
- Promoted stories
- Pathways to
  - Proprietary sites
  - Mobile apps
  - Services

## Now: Click-throughs to Proprietary Websites

- “Your HIV medicine is working for you. But the side effects are not.” <http://www.xxxx.xx>
- Leave social networking site for proprietary website
  - Read FAQs
  - Find phone number to get more information
  - Open app, type in the phone number and call

## Emerging Trend: “Bots”

- Click link to secure chat from webpage or social media, with a prompt “How can I help you?”
- Swipe left below chat box to view/click on FAQs in sponsored content boxes
- Chat session is automated and contextualized
- Offers to connect you directly over secure voice



## Share

- Posted reviews
- Ratings
- Shares

### Now: Online Reviews

- Researchers found that Yelp ratings correlate better to quality measures than HCAHPS scores
- Yelp online reviews of hospitals address most of the HCAHPS criteria
- 9 of the most prevalent criteria in the reviews are not addressed in the HCAHPS

### Emerging: Crowdfunding

- Targeted marketing of patient support programs
- Increase market access to expensive therapies
- Pair with charitable matching funds
- Reduce transaction costs of crowdfunding intermediaries
- Provide option to crowdfund over private network



## Pull

1-on-1, consumer-initiated

- Text
- Bot Chat
- Voice (coming)
- Audio/Visual (coming)

## Now: Leveraging consumer health libraries

- On Facebook page or in Messenger, a user asks a health system about celiac disease. Response includes link to proprietary website
  - Description of disease
  - List of allowed ingredients
  - List of foods to avoid. End of interaction

## Emerging: Personalized food recommendations

- User selects ingredients he likes
- Later, sponsored content in newsfeed features recipes meeting dietary restrictions or requirements
- Automatically recommends substitutions of allowed foods
- User selects ingredients for shopping list or pantry

In conventional retail advertising, there are three sequences in time that are important to marketers:

1

## Stimulus

Your campaigns are aimed at maximizing the “reach” of your message and the “frequency” with which an audience is exposed to messages that shape a desired perception.

2

## First Moment of Truth

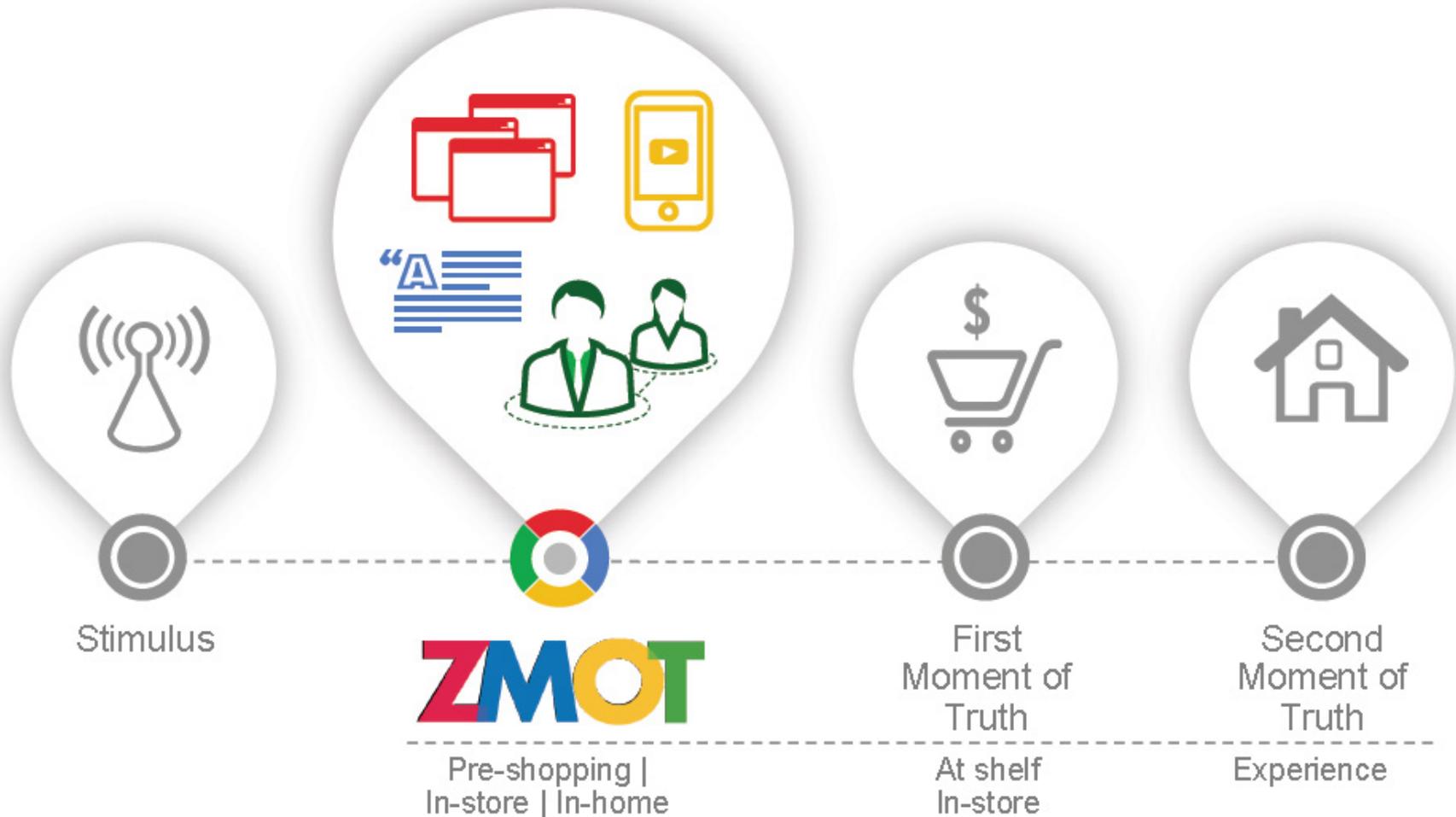
The moment when a buyer has made up her mind and decides to purchase your good or service.

3

## Second Moment of Truth

The buyer reflects on his or her experiences and decides whether or not to repeat the purchase a second time.

# Google's Vision of Digital Marketing



Source: Google/Shopper Sciences, 2011



## Ultimate Moment of Truth

The moment when a satisfying experience inspires consumers to share their experience



## Human behavior

- 6+ sources consulted during the ZMOT
- Average lag times between ZMOT and FMOT vary, usually by industry

## Micromoments

The interactions between a brand and consumer where relationships develop. The advertisers that successfully manage micromoments and make it easier for a consumer to take a desired action can close the time lag between the ZMOT and the FMOT and reduce the chances that the consumer will select a competing product or service



## SMART Objectives

- Specific
- Measurable
- Actionable
- Relevant
- Time-Bound



## RACE Framework

- Reach
- Act
- Convert
- Engage

# Types of Campaign Objectives



## Brand management

Shape perceptions about your organization, and amplify the impact of other efforts being taken to deliver more patient-centered – or member-centered – health care services



## Prevention and wellness

Make general preventive/wellness information more accessible, and encourage healthy behaviors



## Health information

Become a trusted source of accurate and credible health information



## Way-finding

Make it easier to find services they might want or need, and book appointments as part of broader efforts to help people get the right care in the right setting at the right time and for the right cost



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# Two Key Areas of Focus: Marketing and Data



## Marketing



Substantiation



Endorsements



Sponsored or Native Advertising



## Data

# Two Key Areas of Focus: Marketing and Data

- Marketing and Data
- Both Governed by Federal Trade Commission Act:
  - Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful. 15 U.S.C. 45



## Legal Concerns

- Federal Trade Commission
- National Advertising Division – BBB
- Competitors (Lanham Act)
- State Attorneys General



## Reputational Concerns

- Consumer trust

- Key provision of FTCA is the prohibition against deceptive acts or practices
- Health care providers need to be mindful of several core marketing issues:
  - 1 Substantiation
  - 2 Endorsements
  - 3 Sponsored or Native Advertising

- All advertising claims must be truthful, accurate and adequately substantiated
- Substantiation for advertising claims must exist before the advertising is disseminated
- All reasonable interpretations must be supported – ambiguities construed against the advertiser

## HOW TRUE IS IT?



# Determining Level of Substantiation Required

- An advertiser must have at least the level of substantiation stated in the ad
- If no studies/evidence referenced in ad – standard is “reasonable basis”
- What constitutes a reasonable basis depends on:
  - 1 Type of product advertised
  - 2 Type of claim
  - 3 Benefits of a truthful claim
  - 4 Consequence of a false claim
  - 5 Amount of substantiation experts in the field believe is reasonable



Don't exaggerate wait times in the ED - Reporters will love to play gotcha when a billboard says one time and then a visit to the ED reveals a much longer wait

Don't over-inflate hospital rankings and performance – lawsuit in 2014 in Kentucky where patient filed as part of claims false advertising of “remarkable care” when he alleges hospital failed to give proper diagnosis



Don't over hype expected outcome – AGs have conducted investigations into claims of recovery time and typical outcomes

- 1 Broader definition of sponsored advertising- expanded to include social media
- 2 Material connections between social media speakers and advertisers must be disclosed
- 3 Expanded liability for advertisers and endorsers
  - For product claims
  - For failure to disclose material connections
- 4 Advertiser has an affirmative obligation to monitor social media agents



- Practical Challenges:
  - Complying with disclosure requirements in media with limited real estate
  - Social media platforms encouraged to develop protocols
  - Example: hashtags such as #paid or #ad
  - NOTE: Applies to sweepstakes based retweets

- Develop a Social Media Policy for Sponsored Speakers
  - Substantive conduct provisions — Do's and Don'ts
  - Provide company approved product sheets
  - Provide guidelines for disclosure of material connections/freebies
  - Implement procedures for training speakers and bloggers on the FTC Guides
  - Implement procedures for monitoring communications
- FTC ANALYSIS MANDATES SUCH A PROCEDURE

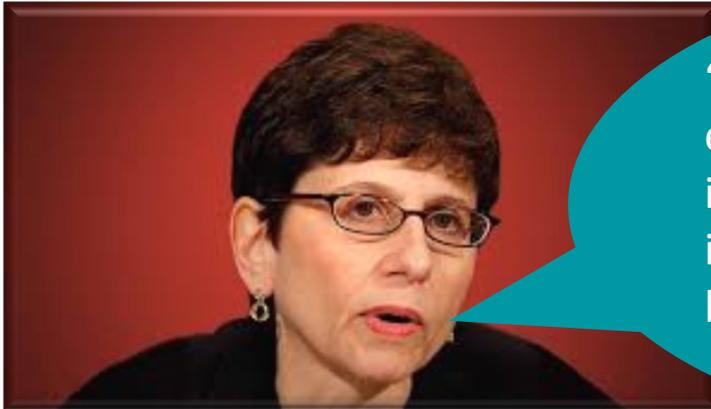


# What is Native Advertising?

- Designed to look and feel like the content around it
- Seamlessly integrated into user feeds
- Nearly indistinguishable from organic content
- Do not interrupt the flow of content
- Look, feel, and function seamlessly across devices
- Typically have higher click-through rates than traditional ads

# What's the Problem...?

Blurred lines between advertising and editorial content



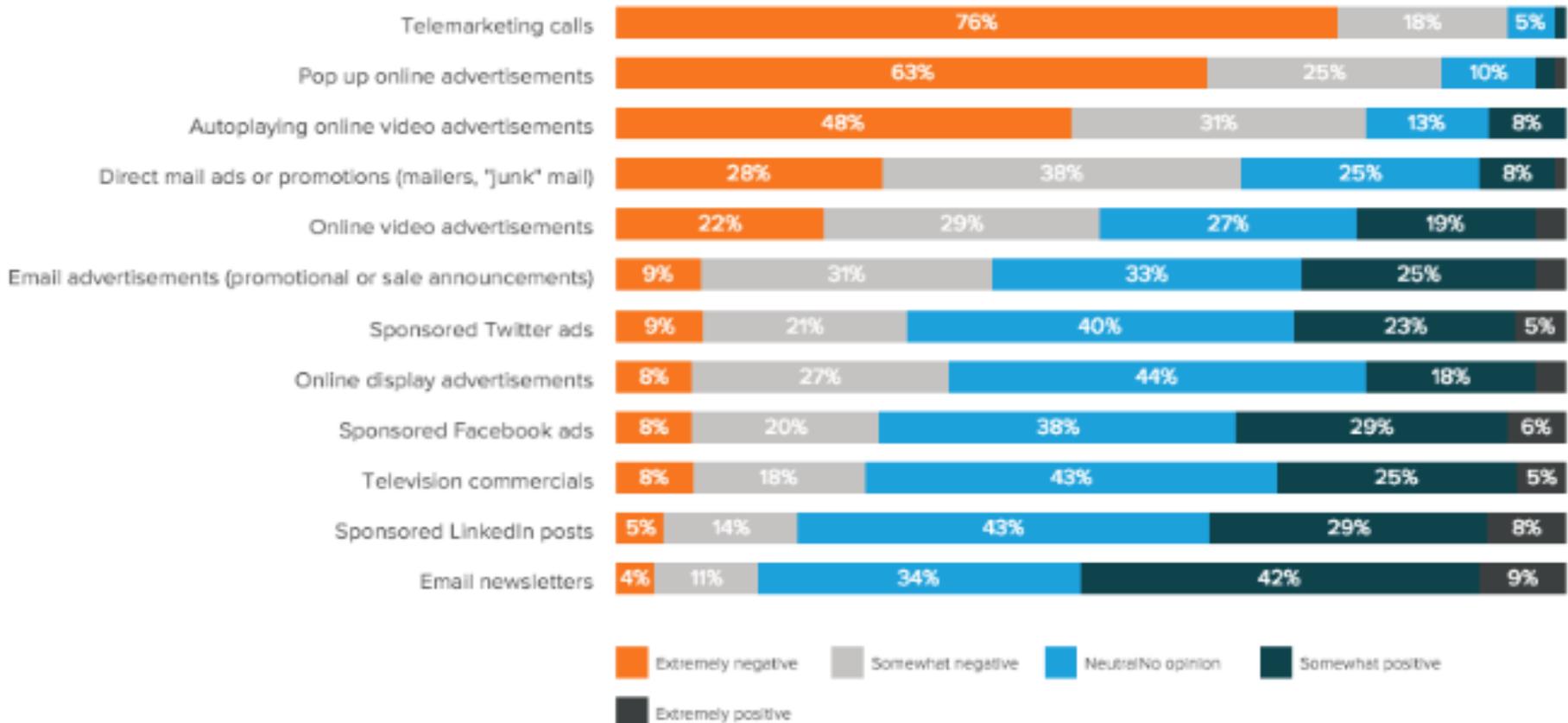
“...by presenting ads that resemble editorial content, an advertiser risks implying, deceptively, that the information comes from a non-biased source”

Jessica Rich, FTC



# Native Advertising Rises As Consumers Opt Out

Have you received or encountered any of the following?  
Did it generate a positive or negative experience?



Source: HubSpot

- Regulations on Use
  - FTC Data report
  - COPPA
  - Behavioral Advertising Self Regulations
  - TCPA
  - DNC
  - CAN-SPAM
  - FDA
  - HIPAA
- Key point: notice & choice

- Practice Fusion case
  - Goal was to create consumer generated review database
  - Sensitive data collected from patients (warts, yeast infections, even suicidal tendencies of a child)
  - FTC asserts it was not clearly disclosed that the data collected from patients would be used for patient reviews
  - Key issue is disclosure was required
    - When it comes to disclosure, 4Ps are paramount:
      - 1 Prominence
      - 2 Placement
      - 3 Presentation
      - 4 Proximity

- Unfairness and Data Security
  - LabMD
    - Issue is a data breach
    - Contention is whether sensitive medical data can constitute ‘harm’ as used in an unfairness analysis under the FTCA
    - FTC holds that yes, release of sensitive data can be harm:
      - “We therefore conclude that the privacy harm resulting from the unauthorized disclosure of sensitive health or medical information is in and of itself a substantial injury under Section 5(n), and thus that LabMD’s disclosure of the [consumer data] caused substantial injury.”

- Damages
  - Spokeo emphasizes damages being capable of monetary value
  - LabMD suggests that non-monetary loss can satisfy FTCA
  - Key difference is one case involves private actors, the other involves a government action; accordingly relief offered by Spokeo may not be comprehensive

# Best Practices with Marketing and Data Use:

- Make claims that can be backed up
- If endorsements are paid for, disclose it
- If an article is paid for, disclose it
- If collecting data for use other than treatment, disclose it
- Keep data secure





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## HIPAA PHI

Unsure whether (and when) individually identifiable health information (IIHI) should be treated as PHI

## Security Safeguards

Unsure what safeguards need to be in place to make sure IIHI does not become PHI

## Negative Perceptions

Negative perceptions that health-related content is being targeted to them

## Promoting Public Sharing

Ethical or legal concerns about encouraging consumers to share information about themselves on a social media site

## Medical Malpractice

Risk of inadvertently providing medical advice or operating without a license

# HIPAA-Covered Functions vs. Noncovered Functions

**Protected health information:** Any “individually identifiable health information” (i.e., health information including demographic information) that is collected from an individual and:



Is created or received by a HIPAA covered entity



Is related to individual’s past, present or future physical or mental health, provision of healthcare, or its payment



Identifies the individual

- HIPAA covered entities are restricted from impermissible uses or disclosures of PHI and are obligated to secure PHI
- Unless use fits within a marketing exception, use of PHI to promote health care services or benefits must have a valid authorization meeting Privacy Rule requirements
- Data breaches require compliance with the HIPAA data breach provisions, Security Rule and individual rights with regard to accessing their PHI (but state laws still apply)



**Single legal entity:** There may be specific functions that make it a covered entity; and other functions that would not



**Hybrid entity:** A covered entity can identify itself as a hybrid entity – it designates which of its activities should be treated as the “health care components” subject to HIPAA

## Breaking it Down

- The hybrid entity must establish appropriate safeguards, policies and procedures to keep health care components separate from non-health care components
- As a result, individually identifiable health information does not have to be treated as PHI for HIPAA purposes if it was not created or received by the Health Care functions of the entity
- Non-health care components are still subject to more stringent state privacy laws

**Example:** Social media sites, in addition to health care providers, health plans and pharmaceutical companies, are subject to California's Confidentiality of Medical Information Act, which protects individually identifiable information that relates to a patient's medical history, mental or physical condition, or treatment.

## Social media "common" mistakes:

- 1 Communication is private and accessible only to the intended recipient
- 2 The contents of posts have been deleted are no longer accessible; remember everything is permanent
- 3 If the site is "private" (i.e., limited to select recipients) that disclosure of patient information is harmless
- 4 There is no breach if name is not disclosed
- 5 By employees: Disclosure on their own personal social media networks is not covered/actionable

# The Emergence of Privacy as a Feature in Social Media

**In 2014, Facebook acquired WhatsApp**, a mobile app for text, voice call, voicemail and file transfer with end-to-end encryption, identity authentication by a user's cell phone number, messages stored on the phone, and deleted from servers after delivery. Undelivered, encrypted messages are deleted from servers at 30 days.

Considerations for healthcare organizations :

- 1 Privacy and Data Security
- 2 Infrastructure-as-a-Service
- 3 Identity Authentication
- 4 Consumer Engagement, Platform-as-a-Service
- 5 Population Health
- 6 Resource Requirements and Performance Indicators



By separating consumer engagement activities from healthcare-related activities, covered entities may have more latitude in interacting with consumers on social media



Preferences vary by individual and circumstance in how the convenience and privacy trade-offs are weighed



HIPAA covered entities have to balance the potential for enhanced consumer engagement against legal and perceived risks and incremental compliance costs

**Caution:** FTC and HHS regulators have not yet formally addressed the consumer engagement by healthcare organizations over social media, and may not be able to keep up with issues as technology continues to evolve.



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# Key Takeaways, and Possible Next Steps

- **Assemble the Team.** Form an internal working group focused on social media engagement
  - Have “fast-following” practitioners, business leaders and patient/member “champions” lead.
  - Include digital marketing, legal, compliance, IT and finance as subject matter experts.
- **Understand Consumer Needs, and When They Need It.** Develop a common vision of what your consumers want at the moment they are “activated” in their own health, or the health of a close family member or friend.
- **Reach Consensus on Your Social Media Vision.** Develop a vision that advances your organization’s broader strategic vision and reflects its core values.
- **Set Up Guardrails.** Develop comprehensive Social Media Standards and Practice Guidelines as a governance document that: Educates and empowers internal stakeholders; defines a governance infrastructure, and establishes criteria for evaluating evolving campaign strategies and new social tools.
- **Get Started.** Draw from your organization’s transformation roadmap to identify projects that benefit from enhanced consumer engagement. Follow SMART and RACE principles.

Social Media Standards and Practice Guidelines emphasize the point that social media is a program, not just a communications channel. It requires consensus and joint governance among diverse stakeholders, facilitates decision-making as social media evolves and aligns activities with the organization's broader strategic vision.



It codifies your efforts to ensure all social media activities are supported by a well-defined governance infrastructure, compliance framework and appropriate resources



It works as a compliance checklist to monitor whether your social media activities are consistent with your institution's operational procedures, legal, regulatory and ethical requirements, and strategic vision



It anticipates the adoption of a similar model for defining your Mobile App and other Digital Health Standards and Practice Guidelines, so that your Social Health activities align with your broader connected health and consumer engagement initiatives

# The Charge to Legal and Compliance Teams in the Development and Maintenance of Social Media Programs

## Privacy

1

State and Federal healthcare-related privacy laws that apply to a healthcare organization's activities on social media

## Consumer Protection

2

State and Federal advertising laws that protect consumer privacy on social media

## Data Security

3

Safeguards to reduce instances of individually identifiable health information being characterized as PHI under HIPAA

## Consumer Education

4

What steps can a healthcare organization take to:

- Manage consumer expectations of privacy over social media?
- Protect itself from allegations of privacy violations?

## Privacy Stewardship

5

Your healthcare organization's stewardship on social media, reflecting its values for the privacy of consumers, whether or not you have a legal obligation to protect it

## Crisis Management

6

Having clear enough policies and governance in place to use social media with agility when events require an immediate response to immediate

Generally, have separate internal and external policies: one for employees and contractors; the other for the public

- Who can access social media from an organization's network
- Instructions on proper activations of network settings
- Inappropriate uses of social media on an organization's network and personal social media sites
- Examples of inappropriate conduct. This is particularly important for healthcare organizations, because it may not be obvious what constitutes PHI
- Prohibitions against disclosing confidential information
- Risks of copyright/trademark and other intellectual property violations
- Prohibitions against defamatory or harassing conduct
- Consequences of inappropriate use
- Incorporation of privacy and other conduct policies
- Responsibilities of employees on their social media sites
- Notification that employees are at personal risk for civil liability

- External social media policy should have the same prominence on your website as your Terms of Conditions, Privacy Policy, Security Practices and HIPAA Notice of Privacy Practices
- Include navigation links and declarations that make clear what the different purposes and scopes are for the Privacy Policy and HIPAA Notice of Privacy Practices
- Privacy Policy: Be explicit about the sources of individually identifiable health data and de-identified aggregate data, and the purposes for collecting/retaining these data
- Security Statement: Be explicit about the safeguards in place to keep individually identifiable health data separate from PHI, and the systems where PHI is stored/used
- Social Media Policy: Should capture any social media channel where your organization may have a presence
- Disclaimer and release from liability for postings made by third parties, and acknowledgement of the security, privacy and confidentiality risks inherent in sending any content over social media sites

# Final Thought. Is It Worth The Effort?

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The biggest risk  
is not engaging.

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Thank You.

Any Questions?