

Coupons, Discounts, & Privacy

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Health Care Compliance Association

Managed Care Compliance Conference

Phoenix, AZ

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Coupons, Discounts, & Privacy

Coupons are *hot!*

- Groupon and other sites
- Clipping coupons online

Privacy Rule & HITECH Act

“Marketing” restrictions

HITECH Act Restriction

“Hybrid entity” status

Amendment to “Marketing” definition

“Marketing” Restrictions

May not use/disclose PHI for “marketing”

- Written authorization

Marketing is:

- Making a communication
- About a product or service that
- Encourages recipient to use or purchase the product or service

“Marketing” Restrictions

Broad definition includes:

- Traditional marketing about products & services
- Every-day activities, *e.g.*, provider directories
- Coupons

Exceptions apply

“Marketing” Restrictions

Exceptions for

- Health-related products/services offered by health plan
- Provider directories and
- Value Added Items & Services

“Marketing” Restrictions

Value Added Item or Service

- Health-related products/services
- Available only to health plan member
- Add value to (but not part of) benefit plan

“Marketing” Restrictions

Add value to benefit plan

Available only to Health Plan member

- Not available to the general public
- E.g., same discount offered in Sunday paper

“Marketing” Restrictions

Health related

- Glasses/contacts
- Eye exams
- Health club membership
- But **not** ticket to movie theater



SAVE 50¢
Fiber One®
when you buy
ONE BOX any
flavor Fiber
One® Chewy
Bar



55¢ off LEAN
CUISINE®
varieties when
you buy **THREE**
LEAN CUISINE®
varieties



SAVE \$3.00
AmLactin® Lotion
on ONE Bottle of
AmLactin® Lotion

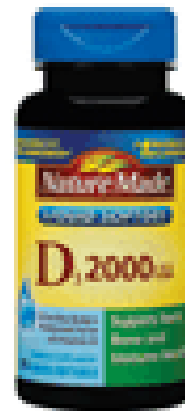
For people with extra-dry skin . . .



50¢ off
Equal® Sucralose
when you buy
any ONE Equal®
Sucralose



**\$1.75 off Centrum®
Silver® Multivitamin
when you buy any
ONE Centrum®
Silver® Multivitamin**



**SAVE \$1.00
Nature Made®
off any Nature
Made®
product**



[15% OFF](#)

**Get 15% OFF Your Order
at Famous Footwear.**



20% OFF LUNCH

Expires August 3, 2012
Valid Monday through Friday
until 4:00 PM
Alcohol excluded



This coupon may be redeemed for 20% Off your table's entire lunch purchase, excluding alcoholic beverages, Parties To Go, tax and gratuity. Valid Monday - Friday until 4pm. One coupon per table, per visit. Must surrender coupon at time of ordering. Coupon may not be reproduced, sold, transferred or traded. Coupon not redeemable for cash, or with any other offer. Sales tax paid by the bearer. Cash redemption value 1/20 of one cent. Valid at any Olive Garden location in the U.S. & Canada. Expires 8/3/2012. ©Darden Concepts, Inc.

CODE: 09



Expiration Date: 8/3/2012



“Marketing” Restrictions

Determining what “health related” means

Communication must be
“health care operation”

- Population-based activity
- Improve health or reduce costs

“Marketing” Restrictions

Proposed “health related” test:

- If the member uses/purchases product or service,
- Is the purpose of the member’s use/purchase reasonably likely to be
- Improving member’s health or reducing cost of health care?

“Marketing” Restrictions

Apply “health related” test to:

- Eye glasses/contacts
- Eye exam
- Health/fitness club
- Movie theater tickets



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One® Chewy
Bar



55¢ off LEAN
CUISINE®
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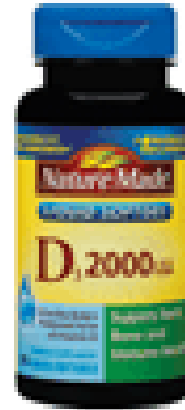
For people with extra-dry skin . . .



50¢ off
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any ONE Equal®
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**\$1.75 off Centrum®
Silver® Multivitamin
when you buy any
ONE Centrum®
Silver® Multivitamin**



**SAVE \$1.00
Nature Made®
off any Nature
Made®
product**



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HITECH Act Restriction

No payment

- May not receive payment for communication
- Directly or indirectly

Vendor's receipt of payment

Coupon Checklist

“Health related”?

- Use coupon to improve health or reduce costs?

Available only to health plan members?

Payment for communications?

- Direct or indirect

“Hybrid Entity” Status

Entity that performs multiple functions

- Functions that make entity a health plan
- Non-health plan functions

Examples: Health insurer that:

- Also sells life insurance
- Collects Health Risk Assessments for employer

“Hybrid Entity” Status

Identify “components”

- Health care components (“covered functions”)
- Non-health care components

Establish firewalls

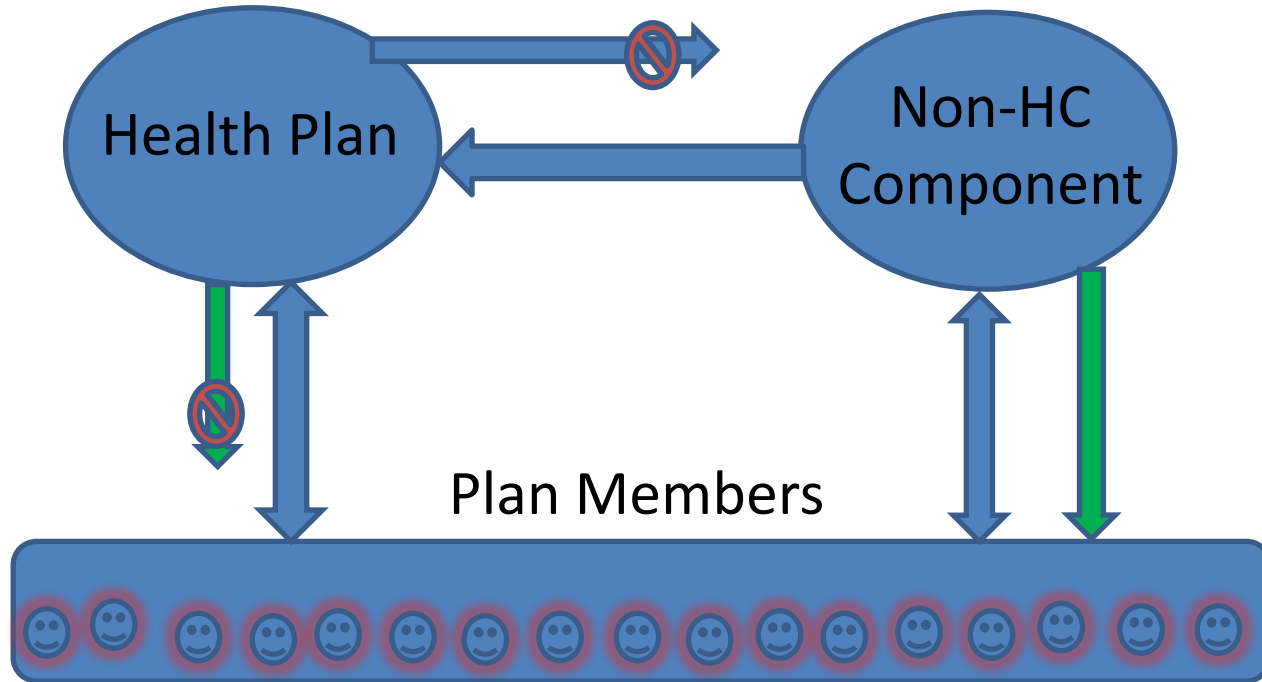
- One-way flow of protected health information

“Hybrid Entity” Status

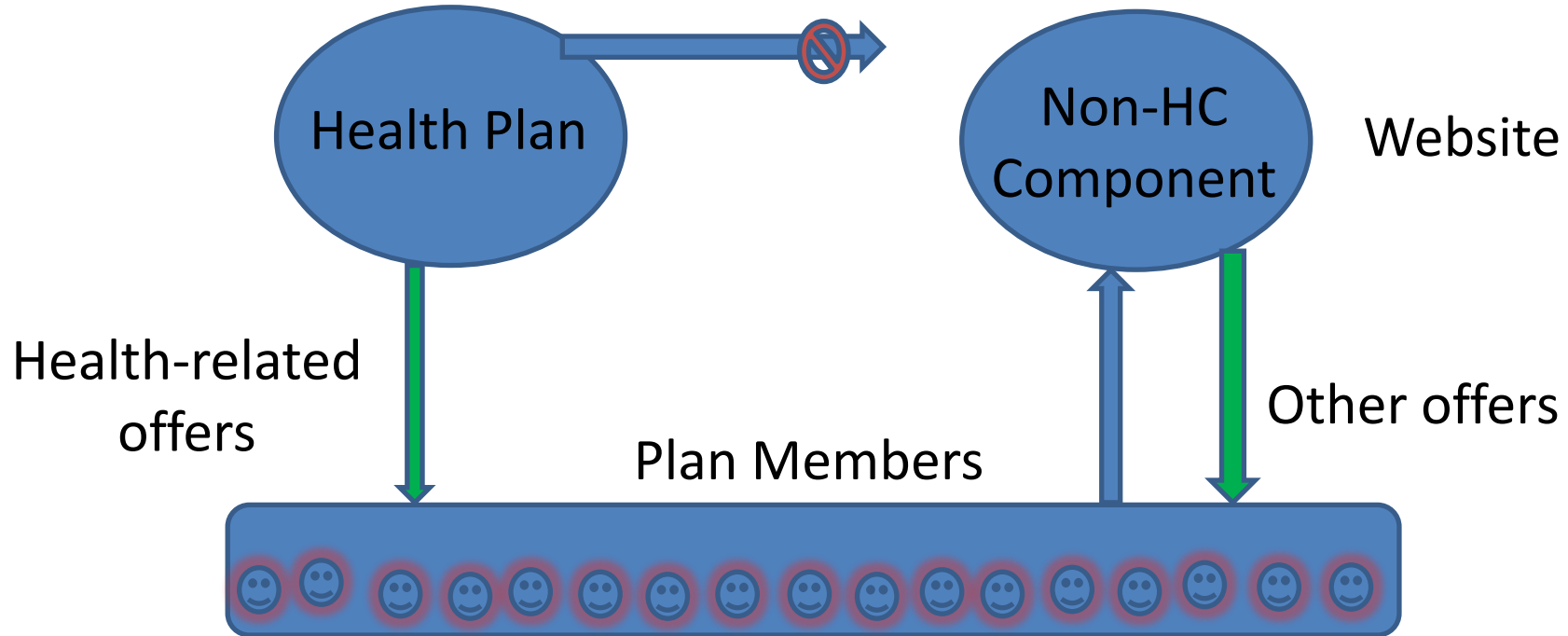
Health care component's PHI:

- No “disclosure” to non-HC component
- No access by non-HC component
- Security Rule safeguards—treat non-HC component as 3rd party
- Employees “wearing two hats”

“Hybrid Entity” Status



“Hybrid Entity” Status



“Marketing” Definition

To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

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“Marketing” Definition

NEW
HITECH Act Provision

Refill reminders,
communications about
drugs & biologics
currently prescribed

Limited financial
remuneration

“Marketing” Definition

“NEW”

HITECH Act Provision

*Previously explained in
guidance*

For the following
treatment and health care
operations purposes . . .

“Marketing” Definition

NEW HITECH Act Provision

... except where covered entity receives financial remuneration in exchange for making the communication.

“Marketing” Definition

To describe a health-related product or service . . . including communications about [Value-Added Items and Services].

To describe a health-related product or service . . . including communications about [Value-Added Items and Services].

“Marketing” Definition

For case management or
care coordination.

For case management or
care coordination.

“Marketing” Definition

to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.

contacting of individuals with information about treatment alternatives, and related functions to the extent [not within definition of] treatment.

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