

# Coupons, Discounts, & Privacy

## **Thomas D. Bixby**

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## **Health Care Compliance Association**

Managed Care Compliance Conference  
Phoenix, AZ  
February 24-26, 2013

# 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

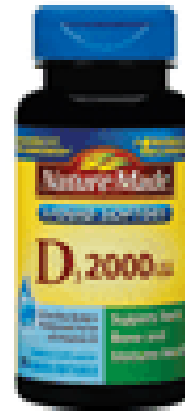


**50¢ off**  
**Equal® Sucralose**  
when you buy  
any ONE Equal®  
Sucralose

For people with extra-dry skin . . .



**\$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



**SAVE 50¢**  
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when you buy  
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One® Chewy  
Bar



**55¢ off LEAN**  
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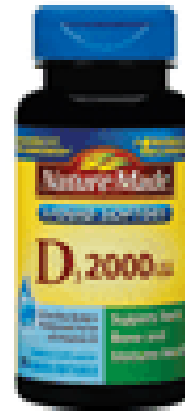


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CODE: 09



Expiration Date: 8/3/2012



# 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

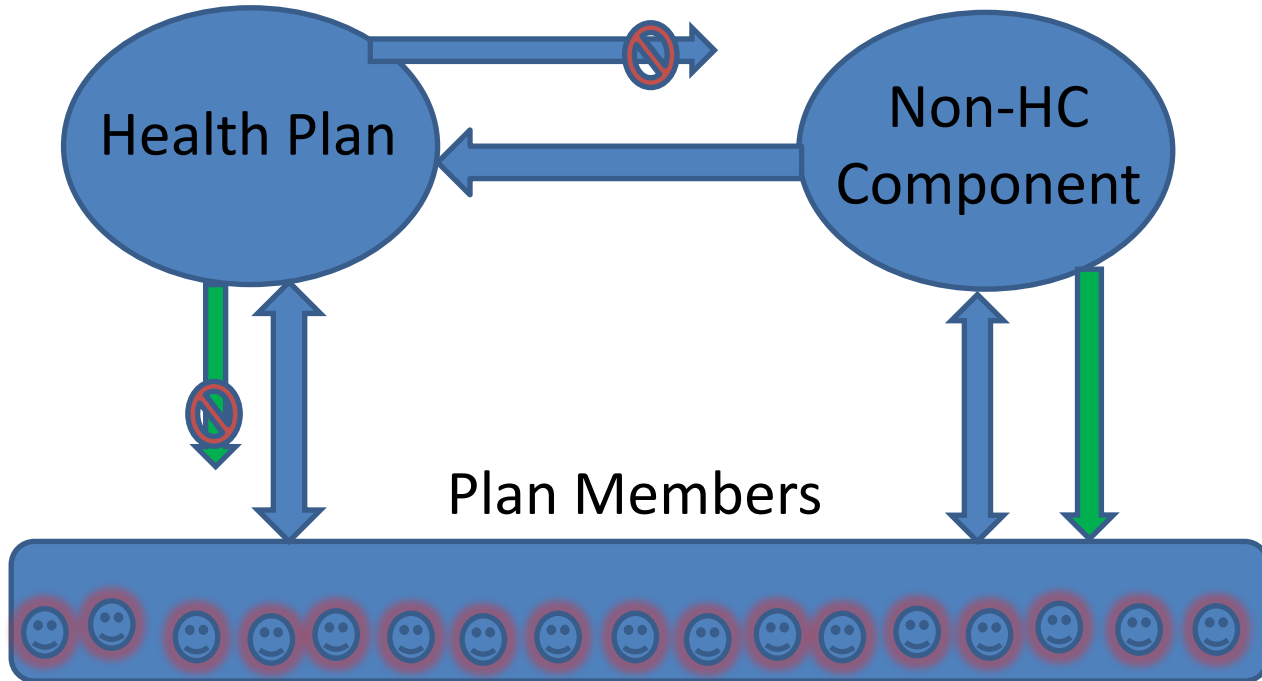
- One-way flow of protected health information

# “Hybrid Entity” Status

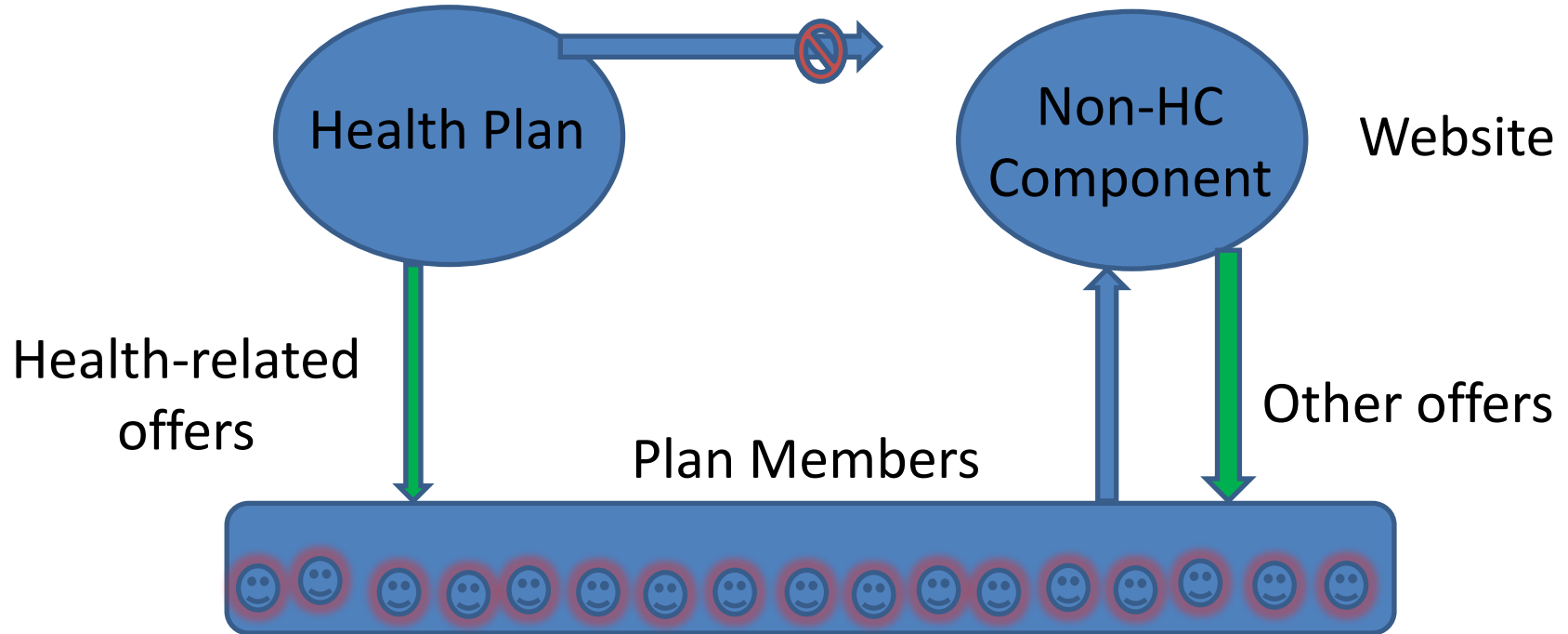
## Health care component’s PHI:

- No “disclosure” to non-HC component
- No access by non-HC component
- Security Rule safeguards—treat non-HC component as 3<sup>rd</sup> 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].

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# “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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