



Representatives #1660.001

INITIAL EFFECTIVE DATE: October 13, 2020	LAST REVISION DATE: July 29, 2025	RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT Office of Compliance and Integrity
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POLICY STATEMENT

Workforce members within the Florida International University (FIU) Health Insurance Portability and Accountability Act (HIPAA) Hybrid Designated Components (hereinafter facilities and programs) must treat a Representative as the patient only when the Representative has authority under Florida or other law for purposes of exercising the patient’s rights under HIPAA.

As a University-wide policy and procedure, this policy and procedure takes precedence over any facility or program-specific policies, procedures, or protocols that conflict with this policy and procedure, unless prior approval is obtained from the Office of Compliance and Integrity. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)

Facilities and programs may maintain HIPAA documentation in either paper or electronic form, provided that any format is sufficiently protected to ensure it will be retrievable throughout the required retention period. Unless otherwise indicated in FIU Privacy or Security Rule Policy and Procedure, the facility and program Privacy Coordinators will be responsible for maintaining all HIPAA documentation relevant to their facility or program. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)

All facility and program Workforce members shall receive mandatory HIPAA Privacy and Security Rule training. (FIU Policy and Procedure #1660.075) (HIPAA Privacy and Security Rule Training)

Workforce members who fail to adhere to this policy and procedure may be subject to civil and criminal penalties as provided by law, and/or administrative and disciplinary action. (FIU Policy and Procedure #1660.085) (Sanctions)

FIU reserves the right to amend, change or terminate this policy and procedure at any time, either prospectively or retroactively, without notice. Any ambiguities between this policy and procedure and the other policies and procedures should be accordingly made consistent with the requirements of HIPAA, federal law, and Florida state statutes. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)



SCOPE

This policy applies to FIU's facilities and programs contained within FIU's HIPAA Hybrid Designation (FIU Policy and Procedure #1610.005), its Workforce members and Business Associates as defined in this policy and FIU Policy and Procedure #1660.015 regarding Business Associate Agreements.

REASON FOR POLICY

To explain the rights of a patient's Representative to access, use or disclose the patient's Protected Health Information (PHI) as described in the HIPAA Privacy Rule, federal law, and Florida state statutes, and when those rights may be denied or restricted.

DEFINITIONS

Please refer to the following link for a complete list of definitions pertaining to all HIPAA policies.

[HIPAA Policies Definitions](#)

ROLES AND RESPONSIBILITIES

Compliance Oversight: The Director of Compliance and Privacy for Health Affairs:

- Evaluates all federal and state healthcare privacy laws, regulations, rules and ordinances (Rules) to ensure compliance with the Rules.
- Develops and maintains all required University-wide Privacy Rule policies and procedures.
- Develops and maintains HIPAA health care Privacy Rule training modules.
- Performs audits and assessments of the facilities and programs to ensure their compliance with the Privacy Rules and associated FIU Policies and Procedures.
- Partners with the Division of Information Technology HIPAA Security Officer to ensure compliance with all federal and state healthcare privacy and security laws, regulations rules, and ordinances.

HIPAA Components (Facilities and Programs):

- Each FIU HIPAA Hybrid Designated facility and program must designate a Privacy Coordinator responsible for overseeing and ensuring the facility's or program's implementation and compliance with the HIPAA Privacy Rule, FIU's associated HIPAA Privacy Policies and Procedures, and any applicable state laws and/or regulations governing the confidentiality, integrity and availability of PHI

and electronic PHI (ePHI), including, but not limited to granting or denying a patient's Representative's request to access, use and disclose the patient's PHI.

RELATED RESOURCES

References

- 45 CFR §164.504
- 45 CFR §164.524
- 45 CFR §164.526
- 45 CFR §164.528
- 45 CFR §164.530
- Florida Statute §39.407
- Florida Statute §394.455
- Florida Statute §397
- Florida Statute §456.057
- Florida Statute §458
- Florida Statute §459
- Florida Statute §709.2012(1), (4), (7), and 11)
- Florida Statute §743.015(1), (7), and (8)
- Florida Statute §744.102
- Florida Statute §744.301(7)
- Florida Statute §744.345
- Florida Statute §744.361(1) and (13)(f)
- Florida Statute §744.346
- Florida Statute §744.3046
- Florida Statute §747
- Florida Statute §95.11

Related Policies

- FIU Policy # 1610.005 (Designated Health Care Components of FIU Community)
- FIU Policy and Procedure #1660.070 (Designation of HIPAA Privacy Officer and Component Privacy and Security Coordinators)
- FIU Policy and Procedure #1660.085 (Sanctions)
- FIU Policy and Procedure #1660.075 (HIPAA Privacy and Security Rule Training)
- FIU Policy and Procedure #1660.015 (Business Associate Agreements)
- FIU Policy and Procedure #1640.025 (Minimum Necessary)
- FIU Policy and Procedure #1660.080 (Policies and Procedures, Changes to Policies and Procedures, and Documentation)
- FIU Policy and Procedure #1660.020 (Authorization for Uses and Disclosures of Patient Protected Health Information)



- FIU Policy and Procedure #1640.015 (Notice of Privacy Practices)
- FIU Policy and Procedure #1660.005 (Right of Patients to Request Confidential Communications Regarding the Use and Disclosure of Their Protected Health Information)
- FIU Policy and Procedure #1660.040 (Verification)
- FIU Policy and Procedure #1660.060 (Accounting of Disclosures of Protected Health Information)

CONTACTS

For further information concerning this policy, please contact the Director of Compliance and Privacy for Health Affairs at (305) 348-0622 or hipaaprivacy@fiu.edu, or contact the appropriate Component Privacy Coordinator.

HISTORY

Initial Effective Date: October 13, 2020

Review Dates (*review performed, no updates*): n/a

Revision Dates (*review performed, updates made to document*): October 13, 2020; February 29, 2024; July 29, 2025.



Representatives #1660.001a

INITIAL EFFECTIVE DATE:	LAST REVISION DATE:	RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT
October 13, 2020	July 29, 2025	Office of Compliance and Integrity

PROCEDURE STATEMENT

I. Representatives

The facilities and programs Privacy Coordinators are responsible for overseeing and ensuring Representatives are treated as the patient with respect to the HIPAA Privacy Rule, federal law, and Florida state statutes. Privacy Coordinators may delegate and share duties and responsibilities as necessary and appropriate but retain oversight responsibility. (FIU Policy and Procedure #1660.070) (Designation of HIPAA Privacy Officer and Component Privacy and Security Coordinators)

Workforce members shall recognize that a patient’s Representative generally has the ability to act on behalf of a patient and exercise the patient’s rights under HIPAA, federal law, and Florida state statutes. FIU’s Workforce members must verify the identity of a Representative, the extent of the Representative’s authority, if any, and document the verification process prior to providing the Representative access to or allowing them to act on behalf of the patient. (FIU Policy and Procedure #1660.040) (Verification)

NOTE: Notwithstanding Florida state statutes, federal law, or any requirements of the HIPAA Privacy Rule regarding Representatives, Workforce members may elect not to treat a person as a Representative of a patient if:

1. The Workforce member has a reasonable belief that
 - A. The patient has been or may be subjected to domestic violence, abuse, neglect by the Representative; or
 - B. Treating the person as the Representative could endanger the patient; and
2. The Workforce member, in the exercise of professional judgement, decides that it is not in the best interest of the patient to treat the person as the patient’s Representative.

The following list of Representatives identifies the extent of their authority to act on behalf of a patient.

Personal Representatives for Minors (Unemancipated)

NOTE: All persons in this state who are under 18 years of age and has not previously been married; not in the Armed Services; not previously emancipated by court proceedings initiated by the parents or the State and in the care and control of the parents (Natural Guardians) are unemancipated minors.

NOTE: Guardian means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated, (Mental Health) (Florida Statute §394.455) over the ward's person or property, or both. (Florida Statute §744.102) (Guardians)

1. **Natural guardians** (Florida Statute §744.301(1))
2. **Preneed guardian for minor** (Florida Statute §744.3046)
3. **Standby guardian** (Florida Statute §744.102)
4. **Plenary guardian** (Florida Statute §744.102)
5. **Limited guardian** (Florida Statute §744.102)
6. **Surrogate** (Florida Statute 765.2035(1)(2))
7. **Alternate Surrogate** (Florida Statute §765.2035)

NOTE: A health care surrogate designation under Florida Statute §765.2035 executed after September 30, 2015, and a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual executing the health care surrogate for a minor or power of attorney.

NOTE: If the designated surrogate or the designated alternate surrogate are unwilling, unable, or reasonably unavailable to make health care decisions for the minor child on behalf of the minor's principal and in accordance with the minor's principal's instructions, Workforce members shall follow the procedures established below in Section I D, E, and F below as if no surrogate had been designated. (Florida Statute §765.2035(4))

NOTE: A natural guardian, legal custodian, or legal guardian of the person of a minor child may designate a separate surrogate to consent to mental health treatment for the minor child. However, unless the document designating the health care surrogate expressly states otherwise, Workforce members shall

assume that the health care surrogate authorized to make health care decisions for a minor is also the minor's principal's choice to make decisions regarding mental health treatment for the minor. (Florida Statute §765.2035(5))

NOTE: Unless the document identifies a time of termination, the designation of a health care surrogate shall remain in effect until revoked by the minor's principal. (Florida Statute §765.2035(6))

NOTE: An otherwise valid designation of a surrogate for a minor shall not be invalid solely because it was made before the birth of the minor. (Florida Statute §765.2035(6))

NOTE: A written designation of a health care surrogate executed pursuant to this section of the law establishes a rebuttable presumption of clear and convincing evidence of the minor's principal's designation of the surrogate. (Florida Statute §765.2035(7))

NOTE: The minor's principal's failure to designate an alternate surrogate does not invalidate the designation of the primary surrogate.

- A. Workforce members must:
1. Obtain and make a copy of the written document identifying the guardian/surrogate,
 2. Date stamp the written document on the day it is received,
 3. Review the written document to determine the extent of the guardian's/surrogate's authority,
 4. Verify and document the identity of the person or legal entity claiming to be the guardian or surrogate. (FIU Policy and Procedure #1660.040) (Verification),
 5. Document in the patient's medical records:
 - a. The name and title of the Workforce member who received the written document,
 6. Promptly secure a copy of the written document and all other copies or original documents received in the patient's medical records, and
 7. Permit the guardian or surrogate to represent the minor child to the extent permitted by law or the written document.
- B. If an individual or legal entity asserts that the natural guardian, legal custodian, or legal guardian of a minor child designated them to serve as an alternate guardian or surrogate to make health care decisions for the minor child, the alternate guardian or surrogate must provide the Workforce member with:
1. An exact copy of the written document signed by the minor's principal, or

2. If the minor's principal was not able to sign the written document, evidence that another person signed the minor's principal's name in the presence of witnesses.

C. Workforce members must:

1. Verify and document the identity of the person or legal entity claiming to be the alternate guardian or surrogate (FIU Policy and Procedure #1660.040) (Verification),
2. Make a reasonable attempt to contact the primary guardian or surrogate to determine if they are not willing, able, or reasonably available to perform their duties,
3. Document in the patient's medical records:
 - a. The name and title of the Workforce member who received the written document,
 - b. The date, time, and reasonable attempt made to contact the primary guardian or surrogate, and
 - c. Their response, if any.
4. Promptly secure in the patient's medical records a copy of the written document and all other copies or original documents received.

NOTE: The designation must be explicitly identified in the written document. The alternate guardian or surrogate may only assume the duties as guardian or surrogate if the original guardian or surrogate is not willing, able, or reasonably available to perform his or her duties. (Florida Statute §765.2035(3))

D. If the Workforce member is able to contact the primary guardian or surrogate with reasonable effort, and the primary guardian or surrogate identifies that they are willing, able, and reasonable available to act in their capacity as guardian or surrogate, the Workforce member must:

1. Document in the patient's medical records:
 - a. The date, time, and manner in which the primary guardian or surrogate was contacted,
 - b. The name of the primary guardian or surrogate,
 - c. The primary guardian's or surrogate's response with respect to their willingness, ability, and reasonable availability to act in the capacity of surrogate, and
2. Inform the alternate guardian or surrogate that the facility or program cannot permit them to currently act in the capacity of the minor child's Representative.
3. Document in the patient's medical records that the alternate guardian or surrogate was informed and the alternate guardian's or surrogate's response, if any.

- E. If the Workforce member is not able to contact the primary guardian or surrogate, or was able to contact the primary guardian or surrogate, but the primary guardian or surrogate identified that they are not willing, able, and/or are reasonably unavailable to act in their capacity as primary guardian or surrogate, the Workforce member must:
1. Document in the patient's medical records:
 - a. The date, time, and manner, in which the primary guardian or surrogate was contacted,
 - b. The name of the primary guardian or surrogate,
 - c. The guardian's or surrogate's response,
 2. Inform the alternate guardian or surrogate that they can currently act in the capacity of the minor child's Representative, and
 3. Permit the alternate guardian or surrogate to represent the minor child to the extent permitted by the written document.
- F. If the primary guardian or surrogate or the alternate guardian or surrogate are not willing, able, or reasonably available to make health care decisions for the minor child on behalf of the minor's principal and in accordance with the minor's principal's instructions, the Workforce member will permit any of the following persons, in the order of priority listed below, consent to the medical care or treatment of a minor child:
1. A person who possesses a power-of-attorney to provide medical consent for the minor.
 2. The stepparent(s).
 3. The grandparent of the minor.
 4. An adult brother or sister of the minor.
 5. An adult aunt or uncle of the minor. (Florida Statute §765.2035(4) and §743.0645(2))
- NOTE:** Any of the persons, in order of priority listed above, may consent to the medical care or treatment of a minor as long as:
1. The minor is not committed to the Department of Children and Families or the Department of Juvenile Justice or in their custody under Florida Statute chapter 39, chapter 984, or chapter 985, and
 2. Only after the treatment provider has made a reasonable attempt to contact the person who has the power to consent as provided by law, but cannot be contacted, and
 3. Actual notice to the contrary has not been given to the treatment provider by that person.
- G. Workforce members must:
1. Document in the patient's medical records:

- a. The name, and title of the Workforce member who made the reasonable attempts to contact the individual on the priority list who have the power to consent as otherwise provided by law,
- b. The date, time, manner, and reasonable attempts made to contact the individuals on the priority list, and
- c. The responses received, if any.

NOTE: The Department of Children and Families or the Department of Juvenile Justice caseworker, juvenile probation officer, or person primarily responsible for the case management of the child, the administrator of any facility licensed by the department under Florida Statute §393.067, §394.875, or §409.175, or the administrator of any state-operated or state-contracted delinquency residential treatment facility may consent to the medical care or treatment of any minor committed to it or in its custody under Florida Statute Chapter 39, Chapter 984, or Chapter 985, when the person who has the power to consent as otherwise provided by law cannot be contacted and such person has not expressly objected to such consent.

H. If a Workforce member is not able to contact the person with the power to consent as otherwise provided by law and the minor was provided “medical care and treatment”, the Workforce member shall notify the parent(s) (Natural Guardian(s)) or other person who has the power to consent as otherwise provided by law as soon as possible after the medical care or treatment is administered pursuant to consent given under this section. The Workforce member shall document in the patient’s medical records:

1. The date, name, and title of the Workforce member,
2. The reason consent as otherwise provided by law was not initially obtained,
3. The date, time, and name of the patient’s Representative,
4. The method used to contact the Representative, and

NOTE: The minor’s medical records shall be open for inspection to the extent permitted by the Representative who has the power to consent as otherwise provided by law. (Florida Statute §743.0645)

NOTE: If a patient is an unemancipated minor, a parent, guardian, or other person acting in loco parentis generally has the authority to act on behalf of the minor for making decisions related to health care and authorizing uses and disclosures of PHI. The parent, guardian or other person acting in loco parentis must be treated as the unemancipated minor’s Representative unless:

1. The unemancipated minor consents to a health care service that by law requires no other consents for service; regardless of whether the consent of another person has also been obtained; and the minor has not requested that the parent,

guardian, or other person acting in loco parentis be treated as the Representative;

2. The unemancipated minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service. **NOTE:** Minors may consent to their own:
 - a. HIV testing and treatment,
 - b. Treatment for alcohol and drug abuse,
 - c. Outpatient mental health treatment, and
 - d. Treatment of sexually transmitted diseases
3. In cases where the minor provides his or her own consent, parents and others will not be recognized as Representatives with respect to PHI pertaining to such treatment; or a parent, guardian or other person acting in loco parentis agrees to confidentiality between FIU health care providers and the patient.

Emancipated Minors

NOTE: In all situations, an emancipated minor is deemed equivalent to an adult for purposes of determining who may be given access to his or her protected health information

NOTE: The disability of nonage of a minor who is married or has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowed, is removed. The minor may assume the management of his or her estate, contract and be contracted with, sue and be sued, and perform all acts that he or she could do if not a minor. (Florida Statute §743.0)

Personal Representatives for Adults

- A. All persons in the state of Florida who are 18 years of age or older, shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law. (Florida Statute §743.07)

NOTE: In cases in which a patient does not have any of the above-mentioned legally appointed representatives or in an emergency situation, Workforce members may treat an appropriate family member (“Next of Kin”) or a patient’s “significant other” (including close friends) as the patient’s Personal Representative.

NOTE: Although exceptions may be made based on the circumstances, family members are generally deemed next of kin in the following order:

1. Spouse

2. Adult children
3. Parents
4. Adult siblings
5. Grandparents or adult grandchildren, and
6. Adult nephews, nieces, uncles or aunts of a patient.

B. Workforce members must:

1. Verify and document the identity of the person claiming to be “next of kin” or a “significant other”. (See FIU Policy and Procedure #1660.040) (Verification),
2. Document in the patient’s medical records:
 - a. The name and title of the Workforce member who completed the verification.
3. Document the type of next of kin or significant other relationship and the name(s) of the person(s) claiming the next of kin or a significant other relationship;
4. Promptly secure in the patient’s medical records all original or copies document(s) received, and
5. Permit the person(s) to act in the capacity of Representative for emergency treatment purposes.

Powers and duties of Guardian, Health Care Agent or Health Care Proxy of an Incapacitated Person

NOTE: The Guardian of an Incapacitated Person is a fiduciary and may exercise only those rights that have been removed from the person (ward) and delegated to the guardian. Recognizing that every individual has unique needs and abilities, a guardian who is given authority over a ward’s person shall, as appropriate under the circumstances to the extent applicable, make provision for the medical, mental, rehabilitative, or personal care services for the welfare of the ward. (Florida Statute §744.361(1) and (13)(f))

NOTE: A Health Care Agent is a person who is appointed via a document signed by a patient giving the Agent the authority to communicate certain medical decisions in the event that the patient becomes incapable of making those decisions. A Health Care Agent’s authority is limited to communicating decisions about life support and comfort care measures. Therefore, the Health Care Agent’s access to the patient’s medical records is limited to the information needed to address these decisions. In the event no such decisions need to be made, the Health Care Agent will not be provided access to the patient’s medical records, unless the access is otherwise authorized.

NOTE: Health Care Agents were replaced with Health Care Representatives October 1, 2006. Health Care Agent documents executed prior to October 1, 2006 will be honored unless the document has been revoked.

NOTE: A Health Care Proxy is used in Florida when someone is incapacitated and **has not** created a designation of health care surrogate or the designated surrogate is unable or unwilling to act. The health care proxy statute provides the legal ability for the family and others to take over someone's health decisions if the incapacitated person is unable to make health care decisions themselves. If someone fails to correctly plan ahead for their incapacity, the Florida proxy law provides an orderly determination for who will make the incapacitated person's health care decisions.

NOTE: The Florida Health Care Proxy statute provides the order of people who can make decisions for the incapacitated person who does not have a capable health care surrogate as follows:

1. The judicially appointed guardian of the patient or the guardian advocate of the person having a developmental disability as defined in Florida Statute §393.063, who has been authorized to consent to medical treatment, if such guardian has previously been appointed; however, this paragraph shall not be construed to require such appointment before a treatment decision can be made under this subsection;
2. The patient's spouse;
3. An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
4. A parent of the patient;
5. The adult sibling of the patient or, if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation;
6. An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained regular contact with the patient and who is familiar with the patient's activities, health, and religious or moral beliefs; or
7. A close friend of the patient. (Florida Statute §765.041)

A. Workforce members must:

1. Verify and document the identity and duties of the person(s) claiming to be a Guardian of an Incapacitated Person, Health Care Agent, or Health Care Proxy (FIU Policy and Procedure #1660.040) (Verification);
2. Document in the patient's medical records the name and title of the Workforce member who completed the verification;
3. Promptly secure a copy of the written document and all other copies or original documents received in the patient's medical records, and
4. Permit access and authority to the extent permitted in the written document, if any, or as permitted by the Florida proxy statute.

NOTE: Rights that may be removed from a person (patient) by a court order determining incapacity and which may be delegated to the guardian, include the right to consent to medical and mental health treatment. Florida Statute §744.3215(3)

Health Care Representative

NOTE: The person claiming to be a Health Care Representative is given the authority via a document signed by the patient and witnessed by two adults giving the Health Care Representative authority to decide any and all health care decisions, including decisions about the withdrawal of life support and/or nutrition and hydration, and decisions to accept or refuse any treatment, service or procedure used to diagnose or treat the person's physical or mental condition in the event that that patient becomes incapable of making such decisions.

- A. Workforce members must:
1. Verify and document the identity and duties of the person claiming to be a Health Care Representative (FIU Policy and Procedure #1660.040) (Verification));
 2. Document in the patient's medical records the name and title of the Workforce member who completed the verification;
 3. Promptly secure a copy of the written document and all other copies or original documents received in the patient's medical records, and
 4. Permit the Health Care Representative to act to the extent permitted in the written document.

Guardian Advocate (Mental Health)

NOTE: A Guardian Advocate for Mental Health is a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to treatment. (Florida Statute §394.455)

- A. Workforce members must:
1. Verify and document the identity and duties of the person claiming to be a Guardian Advocate for Mental Health. (FIU Policy and Procedure #1660.040) (Verification));
 2. Document in the patient's medical records the name and title of the Workforce member who completed the verification;
 3. Promptly secure a copy of the written document and all other copies or original documents received in the patient's medical records, and
 4. Permit the Guardian Advocate for Mental Health to act to the extent permitted in the written document.

Guardian of a Mentally Retarded Patient

NOTE: A Guardian of a Mentally Retarded Person is a person appointed by a Probate Court to supervise some, or all, aspects of the care of a mentally retarded adult who has been determined to be unable to make informed decisions about matters related to his or her care.

- A. Workforce members must:
1. Verify and document the identity and duties of the person claiming to be a Guardian of a Mentally Retarded Patient (FIU Policy and Procedure #1660.040) (Verification));
 2. Document in the patient's medical records the name and title of the Workforce member who completed the verification;
 3. Promptly secure a copy of the written document and all other copies or original documents received in the patient's medical records, and
 4. Permit the Guardian of a Mentally Retarded Patient to act to the extent permitted in the written document.

Power of Attorney

NOTE: A person (agent) with a Power of Attorney is:

1. A natural person who is 18 years of age or older, or
2. A financial institution that has trust powers, and
 - a. Has a place of business in this state, and
 - b. Is authorized to conduct trust business in this state.

NOTE: A power of attorney must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public or as otherwise provided in Florida Statute §695.03.

NOTE: If the principal is physically unable to sign the power of attorney, the notary public before whom the principal's oath or acknowledgment is made may sign the principal's name on the power of attorney pursuant to Florida Statute §117.05(14). (Florida Statute §709.2105)

NOTE: A power of attorney executed on or after October 1, 2011, is valid if its execution complies with Florida Statute §709.2105.

NOTE: A power of attorney executed before October 1, 2011, is valid if its execution complied with the law of this state at the time of execution.

NOTE: A power of attorney executed in another state which does not comply with the execution requirements of this part is valid in this state if, when the power of

attorney was executed, the power of attorney and its execution complied with the law of the state of execution. (Florida Statute §709.2106)

NOTE: An agent may only exercise authority specifically granted to the agent in the power of attorney and any authority reasonably necessary to give effect to that express grant of specific authority. General provisions in a power of attorney which do not identify the specific authority granted, such as provisions purporting to give the agent authority to do all acts that the principal can do, are not express grants of specific authority and do not grant any authority to the agent. (Florida Statute §709.2201)

NOTE: A power of attorney terminates when:

1. The principal dies;
2. The principal becomes incapacitated, if the power of attorney is not durable;
3. The principal is adjudicated totally or partially incapacitated by a court, unless the court determines that certain authority granted by the power of attorney is to be exercisable by the agent;
4. The principal revokes the power of attorney;
5. The power of attorney provides that it terminates;
6. The purpose of the power of attorney is accomplished; or
7. The agent's authority terminates and the power of attorney does not provide for another agent to act under the power of attorney.

NOTE: An agent's authority is exercisable until the authority terminates. An agent's authority terminates when:

1. The agent dies, becomes incapacitated, resigns, or is removed by a court;
2. An action is filed for the dissolution or annulment of the agent's marriage to the principal or for their legal separation, unless the power of attorney otherwise provides; or
3. The power of attorney terminates.

NOTE: Unless otherwise ordered by the court, a proceeding to determine incapacity does not affect the authority of the agent to make health care decisions for the principal. If the principal has executed a health care advance directive designating a health care surrogate, the terms of the directive control if the directive and the power of attorney are in conflict, unless the power of attorney is later executed and expressly states otherwise. (Florida Statute §709.2109)

A. Workforce members must:

1. Verify and document the identity and duties of the person claiming to have a power of attorney (FIU Policy and Procedure #1660.040) (Verification));

2. Document in the patient's medical records the name and title of the Workforce member who completed the verification;
3. Promptly secure a copy of the written document and all other copies or original documents received in the patient's medical records, and
4. Permit the agent to act to the extent permitted in the power of attorney.

Personal Representatives for Deceased Patients

NOTE: For HIPAA purposes, the executor or administrator of an estate must be treated as a Personal Representative. In most cases, upon providing FIU with a certificate from a court as evidence of such appointment, the executor or administrator will be treated as a Personal Representative of the deceased patient. As the deceased patient's Personal Representative, the executor or administrator will only have the authority to access the decedent's PHI and exercise other rights relating to the decedent's PHI as necessary to carry out the executor's or administrator's responsibilities on behalf of the estate. The executor or administrator has no such authority while the patient is living.

NOTE: If there is no executor or administrator of a deceased patient's estate, the patient's next of kin must provide a notarized request in writing stating there is no executor or administrator of the estate, and that said person is the next of kin in order to obtain the deceased patient's PHI.

- A. Workforce members must:
1. Verify and document the identity and duties of the person claiming to be the Personal Representative of a Deceased Patient (FIU Policy and Procedure #1660.040) (Verification));
 2. Document in the patient's medical records the name and title of the Workforce member who completed the verification, and
 3. Promptly secure in the patient's medical records a copy of the written document and all other copies or original documents received.

NOTE: Access to, or disclosure of, a deceased patient's protected health information for research purposes is governed by FIU Policy and Procedure #2370.521 (Use and Disclosure of PHI for Research and Research on the PHI of a Decedent).

II. Record/Documentation Retention

- A. If a communication, action, activity, or designation is required to be documented in writing, the document or record owner (e.g., The facility or program) will maintain such writings, or an electronic copy, for seven (7) years from the date of its creation or the last effective date, whichever is later. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)