



**Use and Disclosure of Protected Health Information for Marketing Purposes and the Sale of Patient Protected Health Information #1660.010**

<b>INITIAL EFFECTIVE DATE:</b>	<b>LAST REVISION DATE:</b>	<b>RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT</b>
September 1, 2009	August 6, 2025	Office of Compliance and Integrity

**POLICY STATEMENT**

Florida International University (“FIU”) is committed to protecting the privacy of Protected Health Information in compliance with all applicable federal and state laws, regulations and rules. For purposes of compliance with the Health Insurance Portability and Accountability Act (HIPAA), FIU has determined that it is a “Hybrid Covered Entity” and has designated the facilities and programs that constitute HIPAA Hybrid Components.

FIU Healthcare Components (facilities and programs) will not use or disclose patient Protected Health Information (PHI) for marketing purposes without first obtaining a specific written authorization from the patient.

FIU may not use or disclose patient PHI for the purpose of a “marketing communication” when the communication:

1. Occurs in a face-to-face encounter with the patient, and
2. Concerns products or services of nominal value (e.g., distribution of calendars, pens etc.).

FIU may disclose PHI to a Business Associate for purposes of marketing communications only if the Business Associate’s function is to assist FIU with conducting the marketing communications.

FIU will not sell and will not permit an individual or entity to sell patient PHI.

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 HIPAA Privacy or Security Rule Policy and Procedure, each facility and program Privacy Coordinator will be



responsible for maintaining all HIPAA documentation relevant to his/her 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 #1640.010) (HIPAA Privacy and Security Rule Training)

Facility and program 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 #1610.015) (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 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 HIPAA Healthcare Components (hereinafter facilities and programs contained within FIU’s HIPAA Hybrid Designation (FIU Policy and Procedure #1610.005), any FIU department, division, office, and/or unit that may engage in marketing to facility and/or program patients, their Workforce members and Business Associates as defined in this policy and FIU Policy and Procedure #1660.015 regarding Business Associate Agreements.

#### REASON FOR POLICY

The intent of this policy is to address the specific and limited uses of patient Protected Health Information (PHI) for marketing purposes, the sale of patient PHI, and when patient written authorization is required.

#### 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 Florida state statutes governing the confidentiality, integrity and availability of PHI and electronic PHI (ePHI), including, but not limited to ensuring the use and disclosure of PHI for marketing and the sale of PHI is only done in a manner required by this policy and procedure.

**RELATED RESOURCES**

**References**

- 45 CFR §164.501
- 45 CFR §164.504
- 45 CFR §164.508
- 45 CFR §164.530
- Florida Statute §456.057
- 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 Procedure #1660.015 (Business Associate Agreements)
- FIU Policy and Procedure #1660.080 (Policies and Procedures, Changes to Policies and Procedures, and Documentation)
- FIU Policy and Procedure #1660.035 (Use and Disclosure of Patient Protected Health Information for Fundraising)



- FIU Policy and Procedure #1660.075 (HIPAA Privacy and Security Training)
- FIU Policy and Procedure #1660.085 (Sanctions)

**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](mailto:hipaaprivacy@fiu.edu), or contact the appropriate Component Privacy Coordinator.

**HISTORY**

**Initial Effective Date:** September 1, 2009  
**Review Dates** (*review performed, no updates*): n/a  
**Revision Dates** (*review performed, updates made to document*): December 31, 2017; October 13, 2020; February 29, 2024; August 6, 2025.



**Use and Disclosure of Patient Protected Health Information for Marketing Purposes and the Sale of Patient Protected Health Information #1660.010a**

<b>INITIAL EFFECTIVE DATE:</b>	<b>LAST REVISION DATE:</b>	<b>RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT</b>
September 1, 2009	August 6, 2025	Office of Compliance and Integrity

**PROCEDURE STATEMENT**

**I. Marketing**

Each HIPAA Hybrid Designated Component (hereinafter 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 Florida state statutes governing the confidentiality, integrity and availability of PHI and electronic PHI (ePHI), including, but not limited to marketing to patients and sale of their PHI. Privacy Coordinators may delegate and share duties and responsibilities with facility and/or program Workforce members 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)

- A. Facility and program Privacy Coordinators, Workforce members, and designated FIU staff members must not use or disclose patient PHI for marketing purposes, unless the patient provides a specific written release or authorization.
- B. Written Authorization is required from patients, or their legally authorized representative (Representative) when FIU, the FIU Healthcare facility or program, and/or an FIU Business Associate receive financial remuneration for making a communication(s) from a third party whose product or service is being marketed, and for any other use or disclosure of PHI which specifically qualify as marketing, unless an exception applies. (See FIU Policy and Procedure #1660.015) (Business Associates) and (FIU Policy and Procedure #1660.001) (Representative)
- C. If a marketing activity involves financial remuneration to the facility or program from a third party, then the written authorization must specifically state that such remuneration is involved.

**For example:** A patient’s written authorization is required prior to the facility or program using the patient’s PHI to make a communication to the patient regarding

the acquisition of new state-of-the-art piece of medical equipment (such as a Transcranial Magnetic Stimulation device) if the manufacturer of the medical equipment paid the facility or program to make the communication.

**II. Uses or Disclosures of PHI That Do Not Constitute Marketing and Patient Written Authorization Is Not Required.**

- A. Facility and program Workforce members may use PHI to communicate with a patient about refill reminders or otherwise communicate about a drug or biologic currently prescribed for the patient so long as any financial remuneration the facility or program receives is reasonably related to the facility's or program's cost of labor, supplies and postage to make the communication. This also includes but is not limited to communications regarding generic equivalent of a currently prescribed medication, communications to encourage the patient to take prescribed medications, and communications regarding all aspects of a drug delivery system related to a current prescribed medication or biologic.

**For example:** a clinical healthcare provider may, in a face-to-face conversation with the patient, recommend, verbally or by handing the patient written materials such as a pamphlet, that the individual take a specific alternative medication, even if the clinical healthcare provider is otherwise paid by a third party to make such communications.

**NOTE:** If the financial remuneration received is in excess of the costs of labor, supplies, and postage to make the communication, the facility or program must obtain the patient's written authorization prior to making the communication.

**IMPORTANT:** Although face-to-face communication directly with the individual; and a promotional gift of nominal value may be provided directly to the patient does not require patient written authorization and disclosure of any financial remuneration that the facility or program may receive, Workforce members **MUST** be aware that these actions may violate the Anti-Kickback Statute. Accordingly, Workforce members should review the relevant Anti-Kickback Rules and contact the Director of Compliance and Privacy for Health Affairs with the Office of Compliance and Integrity or the Office of General Counsel prior to engaging in such communications.

- B. The facilities and programs may use PHI to communicate with a patient about the following matters so long as the facilities and programs do not receive direct or indirect financial remuneration in exchange for making the communication:
1. For treatment of a patient by a healthcare provider, including case management or care coordination for the patient, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the patient to the extent that these activities do not fall within the definition of treatment.
  2. To describe a health-related product or service, or payment for the product or service that is provided by or included in the patient's plan of benefits.

3. Replacement of, or enhancement to, a health plan.

**For example:** The facilities and programs may mail or email flyers to patients announcing the opening of a new healthcare facility/wing where the funds for the new facility/wing were donated by a third party, because the financial remuneration to FIU received from the third party was not in exchange for the mailing or emailing of the flyers.

- C. Written Authorizations IS Not Required from patients to make the following types of Marketing Communications, regardless of whether the facility or program receives Financial Remuneration
  1. A face-to-face communication made by the FIU healthcare facility or program Workforce members to a patient, which may consist of a spoken recommendation, or written materials handed to an individual but does not include telephone calls or mailings.
  2. The facility or program provides the patient with a promotional gift of nominal value.

**For example:** A clinical healthcare provider may, in a face-to-face conversation with the patient, recommend, verbally or by handing the patient written materials such as a pamphlet, that the patient take a specific alternative medication, even if the clinical healthcare provider is otherwise paid by a third party to make such communications.

### **III. Communications That Are Not Subject to the Health Insurance Portability and Accountability Act (HIPAA) and Florida State Statutes Regarding Marketing**

- A. Communications promoting health in general and that do not promote a product or service from a particular healthcare provider, such as communications promoting a healthy diet or encouraging individuals to get certain routine diagnostic tests.
- B. Communications that do not use PHI to target a specific group of individuals, including mass mailings and communications such as newsletters that do not use PHI to identify the recipients of the mailing.
- C. Communications about government and government-sponsored programs, as there is no commercial facility and program to communications about benefits through public programs.

### **IV. Record 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.

**V. Form**

- Marketing/Fundraising Authorization for Use/Disclosure of Medical Information.