



University Community (faculty, staff, students)

SUBJECT (R*)	EFFECTIVE DATE (R*)	POLICY NUMBER (O*)
HIPAA PRIVACY: OBTAINING INDIVIDUAL AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION	December 31, 2017	1640.020

POLICY STATEMENT (R*)

Except as permitted or required by the HIPAA Privacy Rule, all health care components of Florida International University must obtain written authorization of the individual prior to the use or disclosure of protected health information (“PHI”). In order to be valid, the authorization must contain the minimum elements prescribed by the HIPAA Privacy Rule as set forth below. All uses and disclosures of PHI made pursuant to an authorization must be consistent with the authorization.

All authorizations must be documented and retained for a period of no less than six (6) years from the date of the authorization’s expiration. The health care component seeking an authorization from an individual for a use or disclosure of PHI must provide to the individual a copy of the signed authorization. Authorizations may be revoked in accordance with federal law.

REASON FOR POLICY (O*)

In order to ensure that the health care components of Florida International University understand the requirement of obtaining the individual’s authorization prior to the use and disclosure of PHI not otherwise permitted or required by the HIPAA Privacy Rule without such authorization, including the required elements constituting a valid authorization; and special rules allowing (or disallowing) the combination of authorizations for various uses and disclosures of PHI.

RELATED INFORMATION (O*)

45 C.F.R. §§ 164.512(i)(1)(i) and 46.102 (d).

DEFINITIONS (R*)

“Health care component” means a component or combination of components of a hybrid entity that has been specifically designated by the covered entity because it either performs covered functions; or activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities.

“Individually identifiable health information” means information that is a subset of health information, including demographic information collected from an individual, and:

- Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and
 1. That identifies the individual; or
 2. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

“Marketing” means:

- To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made:
 - To describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about: the entities participating in a health care provider network or health plan network; replacement of, or enhancements to, a health plan; and health-related products or services available only to a health plan enrollee that add value, but are not part of, a plan of benefits.
 - For treatment of the individual; or
 - For case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.
- An arrangement between a covered entity and any other entity whereby the covered entity discloses protected health

information to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or services.

“Protected health information” or “PHI” means individually identifiable health information that is:

- Transmitted by electronic media;
- Maintained in electronic media;
- Transmitted or maintained in any other form or medium.
- Protected health information specifically excludes:
 1. Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g (“FERPA”);
 2. Records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and
 3. Employment records held by a covered entity in its role as an employer.

PROCEDURES (O*)

Authorization Requirements

In order to be valid, an authorization must be written in plain language and contain at least the following elements:

1. Individual’s name or other identifier(s);
2. Name/identification of person or class of persons authorized to use or disclose the information;
3. Name/identification of persons or class of persons authorized to receive the information;
4. Specific and meaningful description of the information being used or disclosed;
5. Description of each purpose of the disclosure;
6. Date and signature of the individual or personal representative and a description of such person’s authority to sign on behalf of the individual;
7. Expiration date of the authorization, or event that relates to the individual or the purpose of the use or disclosure which would cause the authorization to expire (Note: authorizations for research purposes may indicate expiration date as “at the end of the research study” or “none”);
8. Statement of the individual’s right to revoke the authorization in writing, and either a description of the exceptions to the right to revoke and a description of how to revoke, or if this information is in the health care component’s Notice of Privacy Practices, a reference to the Notice;
9. Statement of prohibition on conditioning treatment, payment, enrollment or eligibility for benefits on authorization, except in certain circumstances;
10. Statement that information disclosed to recipients who are not covered by HIPAA may be subject to re-disclosure by these recipients and no longer be protected by the HIPAA Privacy Rule;
11. If the authorization is for marketing purposes and involves direct or indirect remuneration to the health care component from a third party, the authorization must state that such remuneration is involved.

Authorization Requirements for Psychotherapy Notes

A release for the use or disclosure of psychotherapy notes requires the individual to submit a separate authorization specifically covering this type of information except in very narrowly defined circumstances, set forth below:

A separate authorization is required for release of psychotherapy notes for all uses and disclosures of psychotherapy notes, except in the following circumstances:

1. use for the purpose of treatment by the provider who created the notes;
2. for permitted health oversight activities with respect to the provider who created the note;
3. use or disclosure by the health care component for its own training programs in which students, trainees or practitioners in mental health learn under supervision to practice or improve their skills in counseling;
4. use or disclosure by the University to defend itself in a legal action or other proceeding brought by the individual;
5. use or disclosure to medical examiners and coroners, as permitted under Florida law;
6. as required by law;
7. use or disclosure made for the purpose of preventing or lessening a serious or imminent threat to the health or safety of a person or the public when made to a person reasonably able to prevent or lessen the threat, including the target of the threat;
8. to the Secretary of the U.S. Department of Health and Human Services for compliance.

SPECIAL RULES FOR CONDITIONED AUTHORIZATIONS

Provision of treatment, payment, enrollment in a health plan or eligibility for benefits may not be conditioned on authorization except:

1. A provider may condition research related treatment on authorization for the use or disclosure of the information for the research;
2. Health care components may condition provision of health care solely for the purpose of creating PHI for disclosure to third parties on authorization for disclosure to those third parties (for example, an independent medical examination); and
3. The health plan component may condition enrollment or eligibility for benefits on authorization obtained prior to the individual's enrollment if the authorization is for the purpose of underwriting, or health plan enrollment and eligibility determinations, and the authorization is not for use or disclosure of psychotherapy notes.

SPECIAL RULES FOR COMBINING AUTHORIZATIONS

Authorizations may be combined with other documents to create a compound authorization except in the following circumstances:

1. Authorizations for release of psychotherapy notes may only be combined with another authorization to release psychotherapy notes.
2. Research authorizations may be combined only with other authorizations or written permissions for the same research study.
3. An authorization may not be combined when treatment, payment, enrollment in a health plan or eligibility of benefits is conditioned upon the authorization.

Except as described above, authorization may be combined with other documents to create compound authorizations. If the PHI falls into one of the categories requiring separate authorization, a separate valid authorization must be obtained.

REVOCAION OF AUTHORIZATION

The individual may revoke authorization at any time in writing, except the authorization is not revoked:

1. to the extent that the health care component has taken action in reliance on the authorization; or
2. if the authorization was obtained as a condition of insurance coverage and other law provides the insurer with the right to contest a claim under the policy or the policy itself.

EFFECT OF PRIOR PERMISSIONS

If an authorization or other express legal permission that permits release of specific PHI was obtained prior to, the effective compliance date for HIPAA for the FIU health care component, the health care component may rely on this permission and need not obtain an authorization for uses and disclosure of PHI that are made in accordance with the prior permission. This applies only to uses and disclosures of PHI created prior to the effective compliance date for HIPAA at FIU which is September 1, 2009. For use or disclosure of PHI created on or after September 1, 2009, a valid authorization for the use or disclosure must be obtained where required.

HISTORY (R*)

Initial Effective Date: September 1, 2009; December 31, 2017

RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT (R*)

Division of Academic Affairs
Florida International University

RESPONSIBLE ADMINISTRATIVE OVERSIGHT (R*)

University Compliance and
Privacy Officer
University Compliance Office PC 429
11200 S.W. Eighth Street
Miami, Florida 33199
Telephone Number: (305) 348-2216

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***R = Required *O = Optional**