



*University Community (faculty, staff, students)*

SUBJECT (R*)	EFFECTIVE DATE (R*)	POLICY NUMBER (O*)
HIPAA PRIVACY: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR MARKETING PURPOSES	December 31, 2017	1640.030

**POLICY STATEMENT (R\*)**

Except under very limited and narrow circumstances described in this policy, the health care components of Florida International University shall not use protected health information for marketing purposes without the patient’s specific written authorization.

Excepted from the requirement of obtaining the patient’s written authorization, the health care component may engage in:

- face-to-face communication made by a health care component of Florida International University directly to the individual; or
- a promotional gift of nominal value provided by the health care component of Florida International University directly to the individual.

PLEASE NOTE: All other marketing activities, of whatever nature, are contingent upon the patient’s written authorization. If the marketing involves direct or indirect remuneration to Florida International University from a third party, the authorization must state that such remuneration is involved.<sup>1</sup>

**REASON FOR POLICY (O\*)**

To ensure that disclosure of protected health information for marketing purposes is done only to the extent permitted under the HIPAA Privacy Rule and other applicable laws.

**RELATED INFORMATION (O\*)**

HIPAA Privacy Rule, 45 C.F.R. § 164.508 (a) (3).  
Florida Stat. § 395.3025(7)(b).

**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:

<sup>1</sup> In addition, Florida law provides that facilities licensed under Chapter 395 (hospitals, ambulatory surgical centers or mobile surgical facilities) shall not use patient information for solicitation or marketing the sale of goods or services without the patient’s specific written release or authorization.

- i. 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.
- ii. For treatment of the individual; or
- iii. 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.

**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. 8<sup>th</sup> Street  
Miami, Florida 33199  
Telephone Number: (305) 348-2216

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