



Representatives #1660.001

INITIAL EFFECTIVE DATE: October 13, 2020	LAST REVISION DATE: February 29, 2024	RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT Office of Compliance and Integrity
--	---	---

POLICY STATEMENT

Each Florida International University (FIU) Health Insurance Portability and Accountability Act (HIPAA) Hybrid Designated Health Care Component (Component) 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.

Component Workforce members must verify the identify and authority of an individual or entity claiming to be a Representative of a patient and the extent of the authority. (FIU Policy and Procedure #1660.040) (Verification)

As a University-wide policy and procedure, this policy and procedure takes precedence over any Component-specific policies, procedures, or protocols that conflicts 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)

Components 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, each Component Privacy Coordinator will be responsible for maintaining all HIPAA documentation relevant to his/her Component. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)

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

Component 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)

Each Component must designate a HIPAA Privacy Coordinator and a HIPAA Security Coordinator. (FIU Policy and Procedure #1660.070) (Designation of HIPAA Privacy Officer and Component Privacy and Security Coordinators)



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 Health Care Components (Components) 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 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

TERM	DEFINITIONS
Access	Means the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any <u>system</u> resource.
Administrative Officer	Means the Component Workforce member responsible for financial management, human resources administration, management of facilities and equipment, and other administrative functions required to support the teaching and research missions of the FIU HIPAA Hybrid Designated Health Care Component. The Administrative Officer is the senior administrative staff position in the department, Division or Office and provides continuity as academic leadership changes.
Agent	Means the recipient of the power of attorney – the party who is given the power to act on behalf of the principal, whether denominated an agent. The agent is sometimes referred to as an “attorney-in-fact.” The terms includes an original agent, co-agent, and successor agent. The term “attorney-in-fact” does not mean the person is a lawyer. (Florida Statute §709.2102(1))
Availability	Means the property that data or information is accessible and useable upon demand by an authorized person.

<p>Business Associate</p>	<p>Generally an entity or person who performs a function involving the use or disclosure of Protected Health Information (PHI) on behalf of a covered entity (such as claims processing, case management, utilization review, quality assurance, billing) or provides services for a covered entity that require the disclosure of PHI (such as legal, actuarial, accounting, accreditation).</p> <p>NOTE: A business associate relationship exists when an individual or entity, acting on behalf of an FIU HIPAA Component(s), assists in the performance of a function or activity involving the creation, use, disclosure, or access of PHI. This includes, but not limited to, claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management or repricing.</p> <p>NOTE: A Business Associate may include any individual or entity that receives PHI from a HIPAA Component in the course of providing legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, software support, or financial services. A Business Associates does not, however, include HIPAA Component workforce members.</p>
<p>Business Associate Agreement</p>	<p>Means a contract or other written arrangement with a business associate which must describe the permitted and required uses of protected health information by the business associate; Provide that the business associate will not use or further disclose the protected health information other than as permitted or required by the contract or as required by law; and Require the business associate to use appropriate safeguards to prevent a use or disclosure of the protected health information other than as provided for by the contract.</p>
<p>Breach</p>	<p>Means the unauthorized acquisition, access, use, or disclosure of Protected Health Information (PHI) that compromises the security or privacy of the data and poses a significant risk of financial, reputational, or other harm to the client.</p>
<p>Clinical Record Behavioral Health</p>	<p>Means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by facility staff which pertains to the patient's hospitalization or treatment. (<u>Florida Statute §394.455</u>)</p>
<p>Code of Federal Regulations</p>	<p>Also known as CFR is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal</p>

	Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.
Component	Means a component or combination of components of a hybrid entity designated by the hybrid entity (Florida International University). Those programs designated by FIU that must comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "Components". Components of FIU are required to comply with the Administrative Simplification provisions of HIPAA because the Components perform a covered function.
Confidentiality	Means data or information is not made available or disclosed to unauthorized persons or processes.
Conservator of the Estate	Means an individual who has been appointed to make financial decisions for an incapable patient. He/she only has access to PHI related to financial issues, such as a Medicaid application or the patient's bills. (Florida Statute §747)
Covered Entity	An entity that is subject to HIPAA. <ol style="list-style-type: none"> 1. a health plan; 2. a health care clearinghouse; and/or 3. a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.
Department Behavioral Health	Means the Department of Children and Families. (<u>Florida Statute §394.455</u>)
Disabilities of Nonage; Removal	Means: <ul style="list-style-type: none"> • A circuit court has jurisdiction to remove the disabilities of nonage of a minor age 16 or older residing in this state upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem. • The court shall consider the petition and, if satisfied that the removal of the disabilities is in the minor's best interest, shall remove the disabilities of nonage; and shall authorize the minor to perform all acts that the minor could do if he or she were 18 years of age. • The judgment shall be recorded in the county in which the minor resides, and a certified copy shall be received as evidence of the removal of disabilities of nonage for all matters in all courts. (Florida Statute §743.015 (1), (7) and (8))
Disclosure	Means the release, transfer, provision of access to, or divulging in any other manner of protected health information outside of the entity holding the information.

Durable	Means, with respect to a power of attorney, not terminated by the principal's <u>incapacity</u> . (Florida Statute §709.2102(4))
Durable Power of Attorney	<p>Except as otherwise provided under this part, a power of attorney is durable if it contains the words: "This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes," or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity.</p> <p>NOTE: The Durable Power of Attorney for Health Care was replaced by the Health Care Representative October 1, 2006. Durable Power of Attorney for Health Care documents executed prior to October 1, 2006 will continue to be honored as long as the appointment has not been revoked.</p>
Electronic Protected Health Information (ePHI)	PHI in electronic form. See also: <u>PHI</u> .
Emancipated Minor	Means a minor child sixteen years or older who has been granted this status by court in Florida. Legal emancipation is also permitted under Florida statutory law for certain cases. A minor of any age who is married or has been married is considered a legal adult. An <u>Emancipated Minor</u> means a minor who is to be treated as an adult for purposes of this policy. An emancipation order allows a minor to consent to "medical, dental or psychiatric care, without parental consent, knowledge or liability."
Express and Informed Consent Mental Health	Means consent voluntarily given in writing, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion. (Florida Statute §394.455)
Facility	Means any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have or who have been diagnosed as having a mental illness or substance abuse impairment. (Florida Statute §394.455)
Florida Statutes	A permanent collection of state laws organized by subject area into a code made up of titles, chapters, parts, and sections. The Florida Statutes are updated annually by laws that create, amend, transfer, or repeal statutory material.

Guardian (Mental Health)	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, (F.S. §394.455) or the ward's person or property, or both. (Florida Statute §744.102)
Guardian ad litem	Means a person who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding. (Florida Statute §744.102)
Guardian Advocate (Mental Health)	Means 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 pursuant to this part. (Florida Statute §394.455)
Guardian of a Mentally Retarded Patient	Means 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. Guardians of an Unemancipated Minor are the father and mother of the unemancipated minor, unless the father or mother is deceased or parental rights have been terminated. Another adult may be appointed by a Probate Court to serve as the guardian of an unemancipated minor, in lieu of the minor's parent(s).
Health Care	Means the care, services, or supplies related to the health of a patient, including: <ul style="list-style-type: none"> 1. preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of a patient or that affects the structure or function of the body; and 2. sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.
Health Care Agent	Means 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 information 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 health information unless the access is otherwise authorized. <u>Health Care Agents were replaced with Health Care Representatives October 1, 2006.</u> <u>Health Care Agent</u>

	<u>documents executed prior to October 1, 2006 will be honored unless the document has been revoked.</u>
Health Care Component	See “Component”
Health Care Operations	Means any of the following activities: <ol style="list-style-type: none"> 1. quality assessment and improvement activities, including case management and care coordination; 2. competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation; 3. conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs; 4. specified insurance functions, such as underwriting, risk rating, and reinsuring risk; 5. business planning, development, management, and administration; and 6. business management and general administrative activities of the entity, including but not limited to: <ol style="list-style-type: none"> a. de-identifying protected health information, b. creating a limited data set, and c. certain fundraising for the benefit of the covered entity.
Health Care Provider	Means a provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.
Health Care Representative	Means someone appointed via a document signed by the patient and witnessed by two adults giving the 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.
U.S. Department of Health and Human Services	Also known as HHS is a cabinet-level executive branch department of the U.S. federal government created to protect the health of the U.S. people and providing essential human services.
Health Information	Means any information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an patient; the provision of health care to an patient; or the past,

	present, or future payment for the provision of health care to an patient.
HIPAA	Means the Health Insurance Portability and Accountability Act of 1996.
Hybrid Covered Entity	Means a single legal entity that performs both covered and non-covered functions. The entity has a defined health care component that engages in HIPAA electronic transactions.
In loco parentis	Latin for "instead of a parent" or "in place of a parent." A person or institution acting in lieu of a parent.
Incapacitated Person	Means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person. (Florida Statute §744.102)
Incapacity	Means the inability of an individual to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income. (Florida Statute §709.2102(7))
Individually Identifiable Health Information	Means information that is a subset of health information, including demographic information collected from an individual, and <ol style="list-style-type: none"> 1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and 2. 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 <ol style="list-style-type: none"> a. That identifies the individual; or b. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
Integrity	Means the property that data or information have not been altered or destroyed in an unauthorized manner.
Letters of Guardianship	Document issued to the guardian must specify whether the guardianship pertains to the person, or the property, or both, of the ward. The letters must state whether the guardianship is plenary or limited, and, if limited, the letters must state the powers and duties of the guardian. The letters shall state whether or not and to what extent the guardian is authorized to act on behalf of the ward with regard to any advance directive previously executed by the ward. (Florida Statute §744.345)
Limited Guardian	Means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by

	<p>court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian. (Florida Statute §744.102)</p>
To “Meet Essential Requirements for Health or Safety”	<p>Means to take those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur. (Florida Statute §744.102)</p>
“Medical Care and Treatment”	<p>Includes ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order, health care surrogate designation under F.S. §765.2035 executed after September 30, 2015, power of attorney executed after July 1, 2001, or informed consent as provided by law is required, except as provided in (Florida Statute §39.407(3))</p>
Minor	<p>Means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise. (Florida Statute §744.102)</p>
Natural Guardians	<p>Means the parents jointly are the natural guardians of their own children and of their adopted children, during minority, unless:</p> <ol style="list-style-type: none"> 1. the parents’ parental rights have been terminated by a court with jurisdiction over guardianship matters finds that it is not in the child’s best interests. 2. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. 3. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted, or if the parents have been granted shared parental responsibility, both continue as natural guardians. 4. If the marriage is dissolved and neither parent is given parental responsibility for the child, neither may act as natural guardian of the child. <p>The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court enters an order stating otherwise. (Florida Statute §744.301(1))</p>
Next of Kin	<p>Means those persons who would be heirs at law of the ward or alleged incapacitated person if the person were deceased and</p>

	includes the lineal descendants of the ward or alleged incapacitated person. (Florida Statute §744.102)
Patient	Means the person who is the subject of the PHI
Patient (Mental Health)	Means any person, with or without a co-occurring substance abuse disorder, who is held or accepted for mental health treatment. (Florida Statute §394.455)
Personal Representative	Means someone with the legal authority to act on behalf of an incompetent adult patient, a minor patient or a deceased patient or the patient’s estate in making health care decisions or in exercising the patient’s rights related to the individual’s protected health information.
Physical safeguards	The physical measures, policies, and procedures to protect a covered entity's or business associate's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
Physician (Mental Health)	Means a medical practitioner licensed under Florida Statute §458 or Florida Statute §459 who has experience in the diagnosis and treatment of mental illness or a physician employed by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense. (Florida Statute §394.455)
Power of Attorney	Means a writing that grants authority to an agent to act in the place of the principal, whether or not the term is used in that writing. (Florida Statute §709.2102(9))
Powers and Duties of Guardian (Minor)	The guardian of a minor shall exercise the powers of a plenary 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))
Preneed Guardian	Means: <ul style="list-style-type: none"> (1) A competent adult may name a preneed guardian by making a written declaration that names such guardian to serve in the event of the declarant’s incapacity. (2) The written declaration must reasonably identify the declarant and preneed guardian and be signed by the declarant in the presence of at least two attesting witnesses present at the same time. (3) The declarant may file the declaration with the clerk of the court. When a petition for incapacity is filed, the clerk shall produce the declaration.

	<p>(4) Production of the declaration in a proceeding for incapacity shall constitute a rebuttable presumption that the preneed guardian is entitled to serve as guardian. The court shall not be bound to appoint the preneed guardian if the preneed guardian is found to be unqualified to serve as guardian.</p> <p>(5) The preneed guardian shall assume the duties of guardian immediately upon an adjudication of incapacity. (Florida Statute §744.3045)</p>
<p>Preneed Guardian for Minor</p>	<p>Means:</p> <p>(1) Both parents, natural or adoptive, if living, or the surviving parent, may nominate a preneed guardian of the person or property or both of the parent’s minor child by making a written declaration that names such guardian to serve if the minor’s last surviving parent becomes incapacitated or dies. The declarant or declarants may also name an alternate to the guardian to act if the designated preneed guardian refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the last surviving parent of the minor.</p> <p>(2) The written declaration must reasonably identify the declarant or declarants and the designated preneed guardian and must be signed by the declarant or declarants in the presence of at least two attesting witnesses present at the same time. The written declaration must also provide the following information for each minor child named in such declaration: the full name as it appears on the birth certificate or as ordered by a court, date of birth, and social security number, if any.</p> <p>(3) The declarant must file the declaration with the clerk of the court. When a petition for incapacity of the last surviving parent or the appointment of a guardian upon the death of the last surviving parent is filed, the clerk shall produce the declaration.</p> <p>(4) Production of the declaration in a proceeding to determine incapacity of the last surviving parent, or in a proceeding to appoint a guardian upon the death of the last surviving parent, constitutes a rebuttable presumption that the designated preneed guardian is entitled to serve as guardian. The court is not bound to appoint the designated preneed guardian if the designated preneed guardian is found to be unqualified to serve as guardian.</p> <p>(5) The preneed guardian shall assume the duties of guardian immediately upon an adjudication of incapacity of the last surviving parent or the death of the last surviving parent.</p>

	<p>(6) If the preneed guardian refuses to serve, a written declaration appointing an alternate preneed guardian constitutes a rebuttable presumption that the alternate preneed guardian is entitled to serve as guardian. The court is not bound to appoint the alternate preneed guardian if the alternate preneed guardian is found to be unqualified to serve as guardian.</p> <p>(7) Within 20 days after assumption of duties as guardian, a preneed guardian shall petition for confirmation of appointment. If the court finds the preneed guardian to be qualified to serve as guardian, appointment of the guardian must be confirmed. Each guardian so confirmed shall file an oath in accordance with Florida Statute §744.347 and shall file a bond, if the court requires a bond. Letters of guardianship must then be issued in the manner provided in Florida Statute §744.345.</p> <p>(8) The clerk shall maintain all declarations filed pursuant to this section until:</p> <ul style="list-style-type: none"> (a) A petition for incapacity of the last surviving parent is filed or petition for the appointment of a guardian upon the death of the last surviving parent is filed as provided in subsection (3); or (b) All minor children named in the declaration have reached the age of majority. (Florida Statute §744.3046)
<p>Principal</p>	<p>Means the maker (an individual) of the power of attorney – the person who is delegating authority to another (the agent). This is the person/individual who is allowing someone else (agent) to act on his or her behalf (power of attorney). (Florida Statute §709.2102(11))</p>
<p>Privacy Coordinator</p>	<p>Means an FIU Workforce member, appointed by the director, manager, or supervisor of a HIPAA Designated Component to conduct and/or coordinate with necessary and appropriate Workforce members all HIPAA Privacy Rule activities and actions within the Component, including but not limited to tracking HIPAA training activities; coordinating HIPAA Privacy Rule implementation; participating in HIPAA Privacy and Security Rule violation investigations, as necessary and appropriate, communicating with the Director of Compliance and Privacy for Health Affairs, the HIPAA Security Officer, and the Office of General Counsel, as necessary and appropriate, regarding HIPAA Privacy and Security Rule activities and concerns; conducting and reporting monitoring activities; participate in assessments; and responding to, tracking and documenting HIPAA Privacy Rule activities. Maintain ongoing</p>

	communication with the Director of Compliance and Privacy for Health Affairs and the HIPAA Security Officer.
Protected Health Information (PHI)	Means any individually identifiable health information collected or created in the course of the provision of health care services by a covered entity, in any form (written, verbal or electronic). PHI relates to the past, present, or future physical or mental health or condition of an individual or the past, present, or future payment for the provision of health care to an individual. Protected Health Information however specifically excludes: <ol style="list-style-type: none"> 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.
Privacy Rule	The regulations at 45 CFR 160 and 164, which detail the requirements for complying with the standards for privacy under the administrative simplification provisions of HIPAA.
Service Provider (Mental Health)	Means a receiving facility, a facility licensed under Florida Statute §397, a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced practice registered nurse, a psychiatric nurse, or a qualified professional as defined in (Florida Statute §394.455)
Standby Guardian	Means a person empowered to assume the duties of guardianship upon the death or adjudication of incapacity of the last surviving natural or appointed guardian. (Florida Statute §744.102)
Third Party	Means a person or institution with whom the agent has dealings on behalf of the principal. Examples include a bank, a doctor, the buyer of property that the agent is selling for the principal, a broker, or anyone else with whom the agent must deal on behalf of the principal.
Totally Incapacitated	Means incapable of exercising any of the rights enumerated in (Florida Statute §744.3215(2) and (3)).
Secretary	Means the Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.
Treatment, Payment, and Healthcare Operations	Also known as TPO.

Treatment	Means the provision, coordination, or management of health care and related services among health care providers or by a healthcare provider with a third party, or consultative services among providers regarding a patient.
Unemancipated Minor	Means a person under 18 years of age and not previously 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.
Use	With respect to patient identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
Ward	Means a person for whom a guardian has been appointed. (Florida Statute §744.102(22))
Workforce	Means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity (FIU HIPAA Component) or business associate, is under the direct control of such covered entity or business associate, whether or not they are paid by the covered entity or business associate.

ROLES AND RESPONSIBILITIES

1. **Compliance Oversight:** The Office of University Compliance and Integrity (University Compliance)
 - 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 and ensures appropriate Workforce members complete the required training.
 - Performs audits and assessments of the Components 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.

2. **HIPAA Components:**
 - Each FIU HIPAA Hybrid Designated Component must designate a Privacy Coordinator responsible for overseeing and ensuring the Component’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 use and/or 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 FIU Office of Compliance & Integrity at (305) 348-2216, compliance@fiu.edu, hipaaprivacy@fiu.edu, or 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.



Representatives #1660.001a

INITIAL EFFECTIVE DATE:	LAST REVISION DATE:	RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT
October 13, 2020	February 29, 2024	Office of Compliance and Integrity

PROCEDURE STATEMENT

I. Representatives

Each Component must designate a Privacy Coordinator responsible for overseeing and ensuring the Component’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 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)

Each FIU Component 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, a Component Workforce member may elect not to treat a person as a Representative of a patient if:

1. The Component 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 Component 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) or 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, the Workforce member 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 under this chapter 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 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. The Workforce member must:
1. Obtain/make a copy of the written document,
 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 surrogate to make health care decisions for the minor child, the alternate 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. The Workforce member must:
1. Verify and document the identity of the person or legal entity claiming to be the alternate surrogate (FIU Policy and Procedure #1660.040) (Verification),
 2. Make a reasonable attempt to contact the primary 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 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 ~~written~~ designation must be explicitly identified in the written document. The alternate surrogate may only assume the duties as surrogate if the original surrogate is not willing, able, or reasonably available to perform his or her duties. (Florida Statute §765.2035(3))

- D. If Privacy Coordinator is able to contact the primary surrogate with reasonable effort, and the primary surrogate identifies that they are willing, able, and reasonable available to act in their capacity as surrogate, the Workforce member must:
1. Document in the patient's medical records:
 - a. The date, time, and manner in which the primary surrogate was contacted,
 - b. The name of the primary surrogate,
 - c. The primary surrogate's response with respect to their willingness, ability, and reasonable availability to act in the capacity of surrogate, and
 2. Inform the alternate surrogate that the Component 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 surrogate was informed and the alternate surrogate's response, if any.
- E. If the Workforce member is not able to contact the primary surrogate, or was able to contact the primary surrogate, but the primary surrogate identified that they are not willing, able, and/or are reasonably unavailable to act in their capacity as primary surrogate, the Workforce member must:
1. Document in the patient's medical records:
 - a. The date, time, and manner, in which the primary surrogate was contacted,

- b. The name of the surrogate,
 - c. The surrogate's response,
 2. Inform the alternate surrogate that they can currently act in the capacity of the minor child's Representative, and
 3. Permit the alternate surrogate to represent the minor child to the extent permitted in the written document.
- F. If the primary surrogate or the alternate 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. The Workforce member 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 the 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. Without parental consent, 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. The Workforce member must:
 - 1. Verify and document the identity of the person claiming to be “next of kin” or a “significant other”. (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 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 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. The Workforce member 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. The Workforce member 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. The Workforce member 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. The Workforce member 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. The Workforce member 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. The Workforce member 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 Center for Children and Family) 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)