



**Use and Disclosure for Which an Authorization or Opportunity to  
Agree or Object is NOT Required #1660.025**

INITIAL EFFECTIVE DATE:	LAST REVISION DATE:	RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT
October 13, 2020	February 29, 2024	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) may use and disclose protected health information (PHI) received, created, or maintained by the Component and Business Associates without obtaining an Authorization or providing the patient an opportunity to agree or object to the use and disclosure as permitted or required by HIPAA, federal law, and Florida state statutes.

Workforce members will ensure that uses and disclosures of patient PHI will include only the minimum necessary. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

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)

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 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 Health Care Components that are 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 ensure that patient PHI received, created, or maintained by the Components is used and disclosed in a manner as permitted or required by HIPAA, federal law and Florida state statutes in those instances in which an Authorization or providing the patient and opportunity to agree or object is not required.

#### DEFINITIONS

TERM	DEFINITIONS
<b>Administrative Officer</b>	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.
<b>Authorization (HIPAA Authorization)</b>	A specific type of permission given by the patient to use and/or disclose protected health information about the client.
<b>Business Associate</b>	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

	<p>provides services for a covered entity that require the disclosure of PHI (such as legal, actuarial, accounting, accreditation).</p> <p><b><u>NOTE:</u></b> 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><b><u>NOTE:</u></b> 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>
<b>Code of Federal Regulations</b>	Also known as CFR is the codification of the general and permanent regulations promulgated by the executive departments and agencies of the federal government of the United States.
<b>Component</b>	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.
<b>Correctional Institution</b>	Means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody.
<b>Covered Entity</b>	<p>An entity that is subject to HIPAA.</p> <ol style="list-style-type: none"> <li>1. a health plan;</li> <li>2. a health care clearinghouse; and/or</li> </ol>

	<p>3. a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.</p> <p><b>Note:</b> FIU, the legal entity, is the Covered Entity for HIPAA compliance purposes. FIU is a Hybrid Entity, only FIU designated Components, to the extent it performs covered functions, are subject to HIPAA requirements.</p>
<b>Covered Functions</b>	Means those functions of a covered entity the performance of which makes the entity a health plan, health care provider, or health care clearinghouse.
<b>De-identified Data</b>	<p>Health information that does not identify a client and with respect to which there is no reasonable basis to believe that the information can be used to identify a client is de-identified. Health information is considered de-identified:</p> <ol style="list-style-type: none"> <li>1. if an expert in statistical and scientific method determines that there is a very small risk that the information could be used alone or in combination with other information to identify an client., or</li> <li>2. if stripped of all of the 18 direct identifiers defined under HIPAA: <ol style="list-style-type: none"> <li>a. Name of client(s);</li> <li>b. Geographic units smaller than a state (initial three digits of a zip code can be used if the geographic area contains more than 20,000 people);</li> <li>c. Dates (Date of Birth, Date of Death, Admission/ Discharge Dates);</li> <li>d. Ages (Over the age of 89 and any combination of date of birth that reveals an age 89 and over);</li> <li>e. Telephone numbers;</li> <li>f. Fax numbers;</li> <li>g. E-mail addresses;</li> <li>h. Social Security Numbers;</li> <li>i. Medical record numbers;</li> <li>j. Health plan beneficiary numbers;</li> <li>k. Account numbers;</li> <li>l. Certificate/License numbers;</li> <li>m. Vehicle identifiers and serial numbers (including license plate numbers);</li> <li>n. Device identifiers and serial numbers;</li> <li>o. Web universal resource locators (URLs);</li> <li>p. Internet protocol (IP) address numbers;</li> </ol> </li> </ol>

	<p>q. Biometric identifiers including finger and voice prints;</p> <p>r. Full face photographic images and any comparable images; and</p> <p>s. Any other unique identifying number, characteristic or code, except a re-identification code.</p> <p><b>NOTE:</b> HIPAA does not apply to de-identified data</p>
<b>Designated Record Set</b>	<p>Means:</p> <ol style="list-style-type: none"> <li>1. A group of records maintained by or for a covered entity that is: <ol style="list-style-type: none"> <li>a. The medical records and billing records about patients maintained by or for a covered health care provider;</li> <li>b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or</li> <li>c. Used, in whole or in part, by or for the covered entity to make decisions about patients.</li> </ol> </li> <li>2. For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.</li> </ol>
<b>Disclosure</b>	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.
<b>Electronic Protected Health Information (ePHI)</b>	PHI in electronic form. See also: <u>PHI</u> .
<b>Emancipated Minor</b>	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.”
<b>Family Member</b>	Means a client’s dependent or any other person who is a first-degree, second-degree, third-degree, or fourth-degree relative of the client or the client’s dependent. Relatives by marriage or adoption are treated the same as relatives who share a common biological ancestor. First-degree relatives include parents, spouses, siblings and children. Second-degree relatives include grandparents, grandchildren, aunts, uncles, nephews, and nieces. Third-degree relatives include great-grandparents, great-grandchildren, great aunts, great uncles, and first cousins. Fourth-degree relatives include great-great grandparents, great-great grandchildren, and children of first cousins.
<b>Florida Statutes</b>	Also known as F.S.

<b>Health Care</b>	Means the care, services, or supplies related to the health of a patient, including: <ol style="list-style-type: none"> <li>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</li> <li>2. sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.</li> </ol>
<b>Health Care Component</b>	See "Component"
<b>Healthcare Operations</b>	Means any of the following activities: <ol style="list-style-type: none"> <li>1. quality assessment and improvement activities, including case management and care coordination;</li> <li>2. competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation;</li> <li>3. conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs;</li> <li>4. specified insurance functions, such as underwriting, risk rating, and reinsuring risk;</li> <li>5. business planning, development, management, and administration; and</li> <li>6. business management and general administrative activities of the entity, including but not limited to: <ol style="list-style-type: none"> <li>a. de-identifying protected health information,</li> <li>b. creating a limited data set, and</li> <li>c. certain fundraising for the benefit of the covered entity.</li> </ol> </li> </ol>
<b>Health Care Provider</b>	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.
<b>U.S. Department of Health and Human Services</b>	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.
<b>Health Oversight Agency</b>	Means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health



	information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.
<b>Health Information</b>	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.
<b>HIPAA</b>	Means the Health Insurance Portability and Accountability Act of 1996.
<b>Hybrid Covered Entity</b>	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.
<b>Individually Identifiable Health Information</b>	Means information that is a subset of health information, including demographic information collected from an individual, and <ol style="list-style-type: none"> <li>1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and</li> <li>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"> <li>a. That identifies the individual; or</li> <li>b. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.</li> </ol> </li> </ol>
<b>Inmate</b>	Means a person incarcerated in or otherwise confined to a correctional institution.
<b>Integrity</b>	Means the property that data or information have not been altered or destroyed in an unauthorized manner.
<b>Law Enforcement Official</b>	Means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: <ol style="list-style-type: none"> <li>1. Investigate or conduct an official inquiry into a potential violation of law; or</li> <li>2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.</li> </ol>



<b>Minimum Necessary</b>	Means the least amount of information possible to accomplish the intended purpose of the use, disclosure, or request.
<b>Patient</b>	The person who is the subject of the PHI
<b>Personal Representative</b>	Means someone with the legal authority to act on behalf of an incompetent adult client, a minor client or a deceased client or the client's estate in making health care decisions or in exercising the client's rights related to the client's protected health information.
<b>Privacy Coordinator</b>	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 communication with the Director of Compliance and Privacy for Health Affairs and the HIPAA Security Officer.
<b>Privacy Rule</b>	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.
<b>Protected Health Information (PHI)</b>	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"><li>1. Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g ("FERPA");</li><li>2. Records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and</li><li>3. Employment records held by a covered entity in its role as an employer.</li></ol>
<b>Public Health Authority</b>	Means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of



	authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.
<b>Record</b>	Means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or on behalf of a Component.
<b>Records Owner</b>	Means any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner's employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner.
<b>Required by law</b>	Means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
<b>Research</b>	Means any systematic investigation designed to develop or contribute to generalizable knowledge. The Privacy Rule permits a covered entity to use and disclose protected health information for research purposes, without an individual's authorization, provided the covered entity obtains either: (1) documentation that an alteration or waiver of individuals' authorization for the use or disclosure of protected health information about them for research purposes has been approved by an Institutional Review Board or Privacy Board; (2) representations from the researcher that the use or disclosure of the protected health information is solely to prepare a research protocol or for similar purpose

	<p>preparatory to research, that the researcher will not remove any protected health information from the covered entity, and that protected health information for which access is sought is necessary for the research; or</p> <p>(3) representations from the researcher that the use or disclosure sought is solely for research on the protected health information of decedents, that the protected health information sought is necessary for the research, and, at the request of the covered entity, documentation of the death of the individuals about whom information is sought. A covered entity also may use or disclose, without an individuals' authorization, a limited data set of protected health information for research purposes.</p>
<b>Secretary</b>	Means the Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.
<b>Treatment, payment, and healthcare operations</b>	(TPO)
<b>Treatment</b>	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.
<b>Use</b>	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.
<b>Workforce</b>	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, procedures and associated forms.

- 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 federal laws and Florida state statutes governing the confidentiality, integrity and availability of PHI and electronic PHI (ePHI), including, but not limited to the use and disclosure of patient PHI for which an authorization or opportunity to agree or object is not required.

## RELATED RESOURCES

### References

- 45 CFR §164.502
- 45 CFR §164.504
- 45 CFR §164.506
- 45 CFR §164.514
- 45 CFR §164.524
- 45 CFR §164.520
- 45 CFR §164.530
- Florida Statute §456.057
- Florida Statute §456.059
- Florida Statute §95.11
- Florida Statute §384.25
- Florida Statute §392.53
- Florida Statute §385.202
- Florida Statute §459.026
- Florida Statute §39.201
- Florida Statute §406.12
- Florida Statute §455.241
- Florida Statute §395.1027

- Florida Statute §415.1034
- Florida Statute §394.4615
- Florida Statute §790.24
- Florida Statute §440.13(4)(c)
- Florida Rules 1.360

#### **Related Policies**

- FIU Policy # 1610.005 (Designated Health Care Components of FIU Community)
- FIU Policy and Procedure #1660.075 (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 #1660.030 (Use and Disclosure of Patient Protected Health Information Requiring an Opportunity for the Patient to Agree or to Object
  - Use and Disclosure for Facility Directory and to the Clergy
  - Use and Disclosure to Individuals Involved in the Patients Case and for Notification Purposes
- 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](mailto:compliance@fiu.edu), [hipaaprivacy@fiu.edu](mailto: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 to document*): October 13, 2020; February 29, 2024.



**Use and Disclosure of Patient Protected Health Information for Which  
an Authorization or Opportunity to Agree or Object is NOT Required  
#1660.025a**

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

**PROCEDURE STATEMENT**

**I. Use and Disclosure Without an Opportunity to Agree or Object**

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 federal laws and Florida state statutes governing the confidentiality, integrity and availability of PHI and electronic PHI (ePHI), including, but not limited to the permitted and required use and disclosure of patient PHI within their Designated Record Set. 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)

Components within the FIU HIPAA Hybrid Designation may use and disclose patient PHI without obtaining an Authorization or providing the patient an opportunity to agree or object to the use and disclosure as permitted or required by HIPAA, federal law, and Florida state statutes in the following instances:

**A. Disclosures to Public Health Authorities**

1. In accordance with other applicable law, Components can and MAY be required to report PHI (such as vital records like births or deaths) to assist certain public health authorities or, at the direction of a public health authority, and to an official of a foreign government agency that is acting in collaboration with a public health authority for the purpose of preventing or controlling disease, injury or disability.
2. The Component Privacy Coordinator MUST be involved in such disclosures and assist with filing all associated documentation. The disclosed information should relate to activities such as public health surveillance, investigations, and/or interventions. It should be given only to public health authorities authorized by law to collect this information. Component Workforce members are not required



to obtain a patient's authorization or agreement when making such disclosures but should only disclose the minimum necessary amount of PHI for this purpose. Prior to disclosing patient PHI, the Component Workforce members must verify the identify and authority of an individual and entity conducting the public health surveillance, investigation, or intervention. (FIU Policy and Procedure #1640.025) (Minimum Necessary) and (FIU Policy and Procedure #1660.040) (Verification)

3. The following disclosures are either required or permitted under HIPAA and Florida state statutes:
  - a. Each person who makes a diagnosis of or treats a person with tuberculosis MUST report such facts as may be required by the Florida Department of Health. (Florida Statute §384.25 and Florida Statute §392.53);
  - b. Each person who makes a diagnosis of or treats a person with a sexually transmissible disease MUST report such facts as may be required by the Florida Department of Health. (Florida Statute §384.25 and Florida Statute §392.53);
  - c. Each person who makes a diagnosis of cancer MUST report the facts as may be required by the Florida Department of Health. (Florida Statute §385.202);
  - d. Each person MUST report adverse incidents involving medical treatment to the Florida Department of Health. (Florida Statute §459.026);
  - e. Health care practitioners MUST report to a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of Florida Statute §395.1027 and the professional organization that certifies poison control centers in accordance with federal law. (Florida Statute §456.057);
  - f. Health care provider licensed in the state of Florida MUST immediately report the existence of a disease of public health significance to the Department of Health. The Department may obtain and inspect all medical records, records of laboratory tests, and other related medical information. ( Florida Statute §381.0031);
  - g. The Florida Agency for Health Care Administration is authorized to require submission by health care facilities of data necessary to carry out its duties. (F.S. §408.061)
  - h. Health care providers MUST report vital events such as births and deaths to the Florida Department of Health. (Florida Statute §382), and
  - i. Health care providers MUST report imminent threats to public health or safety related to bioterrorism. (45 C.F.R. §164.512(b) and (j))

**NOTE:** The HIPAA Privacy Rule expressly defers to the professional judgment of health professionals in making determinations about the nature and severity of the threat to health or safety posed by a patient. Health care providers may disclose the necessary patient PHI to anyone who is in a position to prevent or lessen the threatened harm, including family, friends, caregivers, and law enforcement, without a patient's permission. (45 CFR §164.512)

**NOTE:** Component Workforce members must only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

## **B. Disclosures to Health Oversight Agencies**

1. Component Workforce members **MAY** disclose PHI to a health oversight agency authorized by law to receive such information and necessary for oversight of all of the following:
  - a. The health care system.
  - b. A government benefit program for which health information is relevant to beneficiary eligibility. This includes non-health benefits programs if oversight of such a program requires health information.
  - c. Entities subject to government regulatory programs for which health information is necessary for determining compliance.
  - d. Entities subject to civil rights laws for which health information is necessary for determining compliance.

**NOTE:** Organizations with oversight responsibility include those at federal, state or county level which have, as part of their charter, the legal responsibility and authority to oversee health operations or regulate or license health facilities. Some examples of oversight activities include:

- Audits
- Inspections
- Licensure or disciplinary actions
- Civil investigations, proceedings, or actions
- Administrative investigations, proceedings, or actions
- Criminal investigations, proceedings, or actions

**NOTE:** For the purpose of the disclosures permitted by this section, a health oversight activity does not include an investigation or other activity in which the patient is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

- The receipt of health care;

- A claim for public benefits related to health; or
- Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

**NOTE:** If a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of this section.

**NOTE:** Component Workforce members must only disclose the minimum necessary of PHI for this purpose or as required by law and must verify the identify and authority of an individual and entity conducting public health surveillance, investigations, and/or interventions. (FIU Policy and Procedure #1640.025) (Minimum Necessary) and (FIU Policy and Procedure #1660.040) (Verification)

**C. Disclosures to an Entity Subject to the Food and Drug Administration (FDA)**

1. Component Workforce members MAY report to the FDA information regarding an FDA-regulated product or activity for which:
  - a. A Component has responsibility, the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:
    1. The collection or reporting of adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;
    2. The tracking of FDA-regulated products;
    3. Product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback). (45 CFR §164.512)

**NOTE:** Component Workforce members must only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

**D. Disclosure about Victims of Abuse, Neglect, and Domestic Violence Against Children**

1. Component Workforce member who know, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, or that a child is in

need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care MUST report such knowledge or suspicion to the Florida Department of Children and Families Central Abuse Hotline. (Florida Statute §456.057) (Florida Statute §39.201(1))

2. Component Workforce member who know, or has reasonable cause to suspect, that a child is abused by an adult *other than* a parent, legal custodian, caregiver, or other person responsible for the child's welfare, MUST report such knowledge or suspicion to the Florida Department of Children and Families. (Florida Statute §456.057)
3. Component Workforce members who know, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender, MUST report such knowledge or suspicion to the Florida Department of Children and Families Central Abuse Hotline. (Florida Statute §39.201(1)(a-c)).
4. Licensed health care practitioners MUST report to the Florida Department of Health allegations in which a health care practitioner uses such relationship to engage or attempt to engage the patient, or an immediate family member, guardian, or representative of the patient in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. of sexual misconduct to the department, regardless of the practice setting in which the alleged sexual misconduct occurred. (Florida Statute §456.063)

**NOTE:** A person, excluding the immediate family of the offender or victim, who observes the commission of the crime of sexual battery and has the ability to notify law enforcement who fails to make such notification, is guilty of a misdemeanor. (Florida Statute §794.027)

**NOTE:** The Florida Department of Children and Families, its agent, or its contracted entity, MAY request and obtain patient information or the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults. Florida Statute §456.057(6))

**NOTE:** When responding to an off-site medical emergency, a Components MAY disclose information related to the commission of a crime, the location of the crime or any victims, and the identity, description, and location of the perpetrator of the crime. If the medical emergency is a result of abuse, neglect or domestic violence, this HIPAA standard does not apply and any disclosure to law enforcement must be handled as described below in Law Enforcement Purposes. (45 C.F.R. §164.512(f)(6))

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

**NOTE:** Tracking and an accounting of disclosures are required in these instances, unless there is reason to believe that informing the patient or representative of the disclosure could cause risk of serious harm. (FIU Policy and Procedure #1660.060 (Accounting of Disclosures))

**E. Disclosure about Victims of Abuse, Neglect, and Domestic Violence Against Adults**

1. Any person, including, but not limited to physicians, osteopathic physicians, medical examiners, chiropractic physicians, mental health professionals, social workers, Florida state employees, nurses, paramedics, emergency medical technicians, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited MUST immediately report such knowledge or suspicion to the Department of Children and Families Central Abuse Hotline. (. Florida Statute §39.201(1)) and (Florida Statute §415.1034).
2. A person, excluding the immediate family of the offender or victim, who observes the commission of the crime of sexual battery and has the ability to notify law enforcement who fails to make such notification, is guilty of a misdemeanor. (Florida Statute §794.027)
3. Licensed health care practitioners MUST report to the Florida Department of Health allegations in which a health care practitioner uses such relationship to engage or attempt to engage the patient, or an immediate family member, guardian, or representative of the patient in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. of sexual misconduct to

the department, regardless of the practice setting in which the alleged sexual misconduct occurred. (Florida Statute §456.063)

4. Hospitals and other covered entities MAY disclose protected health information to public health authorities or other appropriate government authorities authorized by law to receive reports of child abuse or neglect. In addition, HIPAA allows covered entities to report protected health information to specified authorities in abuse situations other than those involving child abuse and neglect. (45 C.F.R. §164.512(b)(1)(ii))
5. When responding to an off-site medical emergency, a covered entity MAY disclose information related to the commission of a crime, the location of the crime or any victims, and the identity, description, and location of the perpetrator of the crime. If the medical emergency is a result of abuse, neglect or domestic violence, this HIPAA standard does not apply and any disclosure to law enforcement must be handled as described below in Law Enforcement Purposes. (45 C.F.R. §164.512(f)(6))

**NOTE:** A person, excluding the immediate family of the offender or victim, who observes the commission of the crime of sexual battery and has the ability to notify law enforcement who fails to make such notification, is guilty of a misdemeanor. (Florida Statute §794.027)

**NOTE:** The Florida Department of Children and Families, its agent, or its contracted entity, MAY request and obtain patient information or the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults. (Florida Statute §456.057(6))

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

**NOTE:** Tracking and an accounting of disclosures are required in these instances, unless there is reason to believe that informing the patient or representative of the disclosure could cause risk of serious harm. (FIU Policy and Procedure #1660.060 (Accounting of Disclosures))

#### **F. Uses and Disclosures to Avert a Serious Threat to Health or Safety**

1. HIPAA allows and Florida state statutes permits healthcare providers to in good-faith disclose patient PHI necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. Such disclosures should be



made to person(s) who are reasonably able to prevent or lessen the threat, which can include the person who is the target of the threat or is necessary for law enforcement authorities to identify or apprehend an individual:

- Because of a statement by an individual admitting participation in a violent crime that the Covered Program reasonably believes may have caused serious physical harm to the victim; or
  - Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in 45 CFR §164.501.
2. Psychiatrist MAY disclose patient communications to the extent necessary to warn any potential victims or to communicate the threat to a law enforcement agency for the purpose of averting a serious threat when the patient is engaged in a treatment relationship with a psychiatrist; the patient has made an actual threat to physically harm an identifiable victim or victims; and the psychiatrist makes a clinical judgement that the patient has the apparent capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat. (Florida Statute §456.059 and 45 CFR §164.512)
  3. The clinical record of defendants who are charged with a felony and who have been found to be incompetent to stand trial or who have been acquitted by reason of insanity are confidential and exempt from the Florida public records law unless waived by express and informed consent of the patient or patient's legal guardian. However, sufficient information MAY be released without consent to provide adequate warning to any persons threatened with harm by the patient, and to the committing court, the state attorney, and the attorney representing the patient. (Florida Statute §916.107(8)(a)(5))
  4. Communications between psychologists and patients are confidential; however, such communication MAY be disclosed when a clear and immediate probability of physical harm exists to the patient, to other individuals or to society and the psychologist communicates the information only to the potential victim, appropriate family member, or law enforcement or other appropriate authorities. (Florida Statute §491.0147)

**NOTE:** If necessary, to prevent or lessen a serious and imminent threat to the health or safety of a patient or the public, the HIPAA Privacy Rule defers to the professional judgment of health professionals in making determinations about the nature and severity of the threat to health or safety posed by a patient Health care providers MAY disclose the necessary protected health information to anyone who is in a position to prevent or lessen the threatened harm, including family, friends, caregivers, and law enforcement, without a patient's permission. (45 CFR §164.512)

5. A Component MAY use or disclose protected health information if it, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the disclosure is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. (45 C.F.R. §164.512)

**NOTE:** Component Workforce members MAY NOT use or disclose patient PHI if the information is learned by the Component:

- In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under this section, or counseling or therapy; or
- Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in this section.

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

**NOTE:** Tracking and an accounting of disclosures are required in these instances, unless there is reason to believe that providing an accounting to the patient or representative could cause risk of serious harm. (FIU Policy and Procedure #1660.060) (Accounting of Disclosures)

#### **G. Individuals Who May Have Been Exposed to Communicable Diseases**

1. In accordance with applicable law, Component Workforce members may be required or allowed to disclose relevant information to someone who might have been exposed to a communicable disease, or is at risk of contracting or spreading a disease or condition as necessary to notify such individual as in the conduct of a public health intervention or investigation.

2. A healthcare provider regulated through the Division of Medical Quality Assurance of the Florida Department of Health may disclosure otherwise confidential information to a sexual partner or a needle-sharing partner under the following circumstances:
  - a. If a patient of the practitioner who has tested positive for human immunodeficiency virus (HIV) discloses to the practitioner the identity of a sexual partner or a needle-sharing partner;
  - b. The practitioner recommends the patient notify the sexual partner or the needle-sharing partner of the positive test and refrain from engaging in sexual or drug activity in a manner likely to transmit the virus and the patient refuses, and the practitioner informs the patient of his or her intent to inform the sexual partner or needle-sharing partner; and
  - c. If pursuant to a perceived civil duty or the ethical guidelines of the profession, the practitioner reasonably and in good faith advises the sexual partner or the needle-sharing partner of the patient of the positive test and facts concerning the transmission of the virus. Florida Statute §456.061)

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

### **Disclosures in Judicial and Administrative Proceedings**

#### **H. Legal Orders or Administrative Tribunal Orders**

1. Patient records have a privileged and confidential status and should not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or their legal representative. (Florida Statute §395.3025(4)(d); Florida Administrative Code R. 59A-3.270(7))
2. Florida law guarantees confidentiality protections to patients receiving substance abuse services from any service provider. Records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual patient may not be disclosed without the written consent of the patient subject to certain exceptions. Patient records MAY be disclosed without patient consent upon court order based on application showing good cause for disclosure. (Florida Statute §397.501(7))

3. Component Workforce members MUST release patient PHI in response to a court order or court ordered warrant. (Florida Statute §456.057);
4. Component Workforce members MUST release patient mental health records in response to a Court Order (Florida Statute §456.057)
5. The clinical record of defendants who are charged with a felony and who have been found to be incompetent to stand trial or who have been acquitted by reason of insanity are confidential and exempt from the Florida public records law unless waived by express and informed consent of the patient or patient's legal guardian. However, Component Workforce members MAY release a patient's PHI without consent to persons authorized by order of court and to patient's counsel when needed for adequate representation and to law enforcement agencies, attorney, and judges. (Florida Statute §916.107(8))

**NOTE:** The HIPAA Privacy Rule recognizes that the legal process in obtaining a court order and the secrecy of the grand jury process provides protections of the individual's private information. (45 C.F.R. §164.512(f)(1)(ii)(A)-(B)) Because an administrative request may be made without judicial involvement, the rule requires all administrative requests to include or be accompanied by a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used. (45 C.F.R. §164.512(f)(1)(ii)(C)) Component Workforce members MUST LIMIT the information it provides to the information specifically requested in the court order, subpoena, summons or warrant. (45 C.F.R. §164.512(e)(1)(i)) (FIU Policy and Procedure #1640.025) (Minimum Necessary)

**I. Subpoena, Discovery Request, Other Lawful Process Without an Order**

1. In any civil or criminal action, unless otherwise prohibited by law, Component Workforce members MAY disclose patient PHI without written authorization upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking the records. (Florida Statute §456.057)
2. Patient medical records may be disclosed to a health care practitioner's or provider's attorney during a consultation if the health care practitioner or provider reasonably expects to be deposed, to be called as a witness, or to receive formal or informal discovery requests in a medical negligence action, presuit investigation of medical negligence, or administrative proceeding. (Florida Statute §456.057)

3. There are three circumstances where the Component Workforce members may disclose patient medical records in response to a subpoena, discovery request, or other lawful process when the request is not accompanied by an order from a court or administrative tribunal.

First, the Component may disclose the requested medical records if satisfactory assurance has been received that the party seeking the PHI sincerely tried to provide a notice to the patient and the patient had an opportunity to object. This assurance should consist of documentation (such as the notice) and must include a signed statement from the requestor stating:

- The requestor made a good faith effort to provide a notice to the patient (which could have included sending it to the last known address of the patient); and
- The notice included enough information about the litigation or proceeding for the patient to object through the presiding court or tribunal. Even if a copy of the notice is provided in which the opportunity to object seems clear, the requestor must sign a statement saying that the patient had enough information to raise an objection; and
- The timeline provided for raising objections has expired and either no objections were filed or the objections have been resolved through the court or tribunal to allow the disclosure.

Second, the Component may disclose the requested medical records if satisfactory assurance has been received where the party seeking the information made a reasonable effort to secure a qualified protective order. This assurance can consist of documentation (such as the protective order) and must include a signed statement from the requestor stating that:

- The parties involved have agreed to a qualified protective order and have presented it to the court or administrative tribunal; or
- The party seeking the medical records has requested a qualified protective order.

**NOTE:** The Component may disclose medical records in response to lawful process without receiving satisfactory assurance if the requestor makes reasonable efforts to provide notice to the patient sufficient to meet the requirements of this section or to seek a qualified protective order sufficient to meet the requirements.

Third, the Component Workforce members MAY agree to provide the above-described notice to the patient or seek the above-described qualified protective order. (45 CFR §164.512)

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

**J. Pursuant to Process and as Otherwise Required by Law.**

1. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records MUST be furnished to both the defendant and the plaintiff. (Florida Rule 1.360)

**NOTE:** Also see Florida Statute §542.28 which defines civil investigative demands, although this is outside the allowed disclosure under Florida Statute §395.3025, Florida Statute §394.4615, and Florida Statute §456.057.

2. Component Workforce members MAY disclose patient medical records In compliance with and as limited by the relevant requirements of:
  - a. A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer; a grand jury subpoena; or an administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
    - i. The information sought is relevant and material to a legitimate law enforcement inquiry;
    - ii. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
    - iii. De-identified information could not reasonably be used. (45 CFR §164.512)
3. In response to an administrative request, civil investigative demand or grand jury subpoena, (45 CFR §164.512)

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

**K. Disclosures to Law Enforcement Officials**

1. Component Workforce members MUST disclose patient PHI regarding suspicious deaths. (Florida Statute §415.1034(2) and (Florida Statute §406.12);
2. Component Workforce members MAY disclose patient information for the purpose of averting a serious threat to health or safety when the patient has declared an intention to harm other persons. (Mental Health Florida Statute §394.4615)



3. For the purpose of averting a serious threat when the patient is engaged in a treatment relationship with a psychiatrist; the patient has made an actual threat to physically harm an identifiable victim or victims; and the psychiatrist makes a clinical judgement that the patient has the apparent capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat. The psychiatrist MAY disclose patient communications to the extent necessary to warn any potential victims or to communicate the threat to a law enforcement agency. (Florida Statute §456.059) and (45 CFR §164.512 permitted disclosure)
4. When knowingly treating any person suffering from a gunshot wound or life-threatening injury indicating an act of violence, or receiving a request for such treatment, health care providers MUST report the same immediately to the sheriff's department of the county in which said treatment is administered or request therefore received. (Florida Statute §790.24)
5. Component Workforce members MUST report of second and third-degree burns to the County Sheriff if they are believed to be caused by violence or unlawful activity. (Florida Statute §877.155)
6. Florida state statute guarantees confidentiality protections to patients receiving substance abuse services from any service provider. Records of service providers which pertain to the identity, diagnosis, and prognosis of service provision to any individual patient are confidential and may not be disclosed without the written consent of the patient subject to certain exceptions. Patient records MAY be disclosed without patient consent to law enforcement officers when the communication is directly related to a patient's commission of a crime on the premises of the provider or against provider personnel or to a threat to commit such crime and are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, the individual's name and address, and the individual's last known whereabouts. (Florida Statute §397.501(7))
7. If a Component health care provider providing care to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of the medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in Florida Statute §316.193(1)(b), the health care provider MAY, with no risk of civil, criminal, or administrative action, notify any law enforcement officer/agency within a reasonable time. (Florida Statute §316.1933)

**NOTE:** A person, excluding the immediate family of the offender or victim, who observes the commission of the crime of sexual battery and has the ability to notify law enforcement who fails to make such notification, is guilty of a misdemeanor. (Florida Statute §794.027)

When not otherwise required by law, HIPAA permits disclosures of patient PHI to law enforcement without patient authorization when necessary to locate a suspect, fugitive, material witness or missing person.

**NOTE:** Information related to the individual's DNA, dental records, body fluid or tissue typing, samples, or analysis cannot be disclosed under this provision, but may be disclosed in response to a court order, warrant, or written administrative request. Missing persons who do not consent to be listed in the directory shall remain confidential if they do not wish to be found. (45 C.F.R. §164.512(f)(2))

8. Component Workforce members MAY disclose patient PHI that the Workforce member believes in good faith constitutes evidence of a crime occurring on its premises. For example, if a person is disruptive and the hospital has asked the person to leave and they refuse, that likely qualifies as trespassing and the police may be called. Similarly, evidence of the crime of drug diversion may include medication records that include protected health information. (45 C.F.R. §164.512(f)(5))
9. When responding to an off-site medical emergency, a Component Workforce members MAY disclose information related to the commission of a crime, the location of the crime or any victims, and the identity, description, and location of the perpetrator of the crime. If the medical emergency is a result of abuse, neglect or domestic violence, this HIPAA standard does not apply and any disclosure to law enforcement must be handled as described above
10. Component Workforce members MAY use or disclose protected health information if it, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the disclosure is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. (45 C.F.R. §164.512(j)(1)(i))
11. Component Workforce members MAY disclose protected health information to public health authorities or other appropriate government authorities authorized by law to receive reports of child abuse or neglect.

**NOTE:** Law Enforcement Delay

*If a law enforcement official states that a notification, notice, or posting required under this subpart would impede a criminal investigation or cause damage to national security, the Component shall:*

- 1. If the statement is in writing and specifies the time for which a delay is required, delay such notification, notice, or posting for the time period specified by the official; or*
- 2. If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.*

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law (FIU Policy and Procedure #1640.025) (Minimum Necessary) and must verify the identity and authority of the alleged law enforcement officer. (FIU Policy and Procedure #1660.040) (Verification)

#### **L. Reporting Violent Criminals**

Component Workforce members MAY disclose PHI to law enforcement authorities to help them identify or apprehend an individual who admitted to participating in a violent crime in which someone was seriously hurt.

However, no such disclosure can be made if the statement occurred during treatment, counseling, or therapy (or request for such services) for the type of behavior that led to such a crime.

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

#### **M. Victims of Crime**

Component Workforce members MAY disclose patient PHI to a law enforcement official making a request for information about a patient who is, or is thought to be, a victim of a crime.

1. When not otherwise required by law, Component Workforce members MAY disclose protected health information to law enforcement in response to a request concerning a victim or suspected victim of a crime. The patient must agree to the disclosure. If the patient is incapacitated and cannot agree, the Component Workforce members may disclose the protected health information if law enforcement officials represent that the protected health information is not intended to be used against the victim, is needed to determine whether another person broke the law, the investigation would be materially and adversely affected by waiting until the victim could agree, and the Component Workforce member believes in its professional judgment that doing so is in the best interests of the patient whose information is requested. (45 C.F.R. §164.512(f)(3))

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

**N. Crime on the Covered Program Premises**

1. Florida State Statutes guarantees confidentiality protections to patients receiving substance abuse services from any service provider. Records of service providers which pertain to the identity, diagnosis, and prognosis of service provision to any individual patient are confidential and may not be disclosed without the written consent of the patient subject to certain exceptions. Patient records MAY be disclosed without patient consent to law enforcement officers when the communication is directly related to a patient's commission of a crime on the premises of the provider or against provider personnel or to a threat to commit such crime and are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, the individual's name and address, and the individual's last known whereabouts. (Florida Statute §397.501(7))
2. Component Workforce members MAY disclose protected health information that the Component believes in good faith constitutes evidence of a crime occurring on its premises. For example, if a person is disruptive and the hospital has asked the person to leave and they refuse, that likely qualifies as trespassing and the police may be called. Similarly, evidence of the crime of drug diversion may include medication records that include protected health information. (45 C.F.R. §164.512(f)(5))

3. NOTE: Whoever, being required in the name of the state by any officer of the Florida Highway Patrol, police officer, beverage enforcement agent, or watchman, neglects or refuses to assist him or her in the execution of his or her office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in case of the rescue or escape of a person arrested upon civil process, shall be guilty of a misdemeanor of the second degree. (Florida Statute §843.06)

NOTE: Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

#### **O. Reporting Crime in Emergencies**

1. Component Workforce members providing emergency health care in response to a medical emergency, other than such emergency on the premises of the Component, MAY disclose PHI to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
- The commission and nature of a crime;
  - The location of such crime or of the victim(s) of such crime; and
  - The identity, description, and location of the perpetrator of such crime. (45 CFR §164.512)

NOTE: If the Component Workforce member believes that the medical emergency described in this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to “Disclosures about victims of abuse neglect, and domestic violence against an adult” identified above.

#### **P. Identifying or Locating a Person**

When not otherwise required by law, HIPAA permits disclosures to law enforcement without individual authorization when necessary to locate a suspect, fugitive, material witness or missing person, but with certain limitations. (See (FIU Policy and Procedure #1640.025) (Minimum Necessary)

NOTE: Information related to the individual’s DNA, dental records, body fluid or tissue typing, samples, or analysis cannot be disclosed under this provision, but may be disclosed in response to a court order, warrant, or written administrative

request. Missing persons who do not consent to be listed in the directory shall remain confidential if they do not wish to be found. (45 C.F.R. §164.512(f)(2))

**Q. Disclosure of Deceased Persons' PHI**

1. Generally, the same use and disclosure requirements apply to deceased patients as those that apply to living patients. The PHI of a deceased person is protected for fifty (50) years following the person's death. However, there are some exceptions as identified above and immediately below.

**R. Medical Examiners**

1. Component Workforce members MAY disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.
2. It is the duty (required) of any person where a death occurs, under the circumstances listed below, who becomes aware of the death to report such death and circumstances to the district Medical Examiner. The applicable circumstances are:
  - 1) Result of criminal violence;
  - 2) By accident;
  - 3) By suicide;
  - 4) Suddenly, when in apparent good health;
  - 5) Unattended by a practicing physician or other recognized provider;
  - 6) In any prison or penal institution;
  - 7) In police custody;
  - 8) In any suspicious or unusual circumstance;
  - 9) By criminal abortion;
  - 10) By poison;
  - 11) By disease constituting a threat to public health; or
  - 12) By disease, injury or toxic agent resulting from employment. (Florida Statute §406.11)
3. Component Workforce members MUST report the death of a child suspected as a result of abuse, abandonment, or neglect, to the Medical Examiner. (Florida Statute §39.201)

**S. Funeral Directors**



1. Component Workforce members MAY disclose PHI to funeral directors consistent with applicable law and as necessary to carry out their duties with respect to the decedent. The Component Workforce members MAY disclose the PHI prior to the impending death of the patient.

**T. Uses and Disclosures for Cadaveric, Organ, Eye or Tissue Donation Purposes.**

1. Component Workforce members MAY use or disclose PHI to entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye, or tissue donation and transplantation. CFR §164.512

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (See FIU Policy and Procedure #1640.025) (Minimum Necessary)

**U. Disclosures for Research**

1. Component Workforce members MAY disclose patient PHI for statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative (Florida Statute §456.057) or as approved by the Institutional review Board for those researchers not required to comply with the requirements of Florida Statute §456.057.

**V. National Security and Intelligence Activities.**

1. Component Workforce members MAY disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, *et seq.*) and implementing authority (*e.g.*, Executive Order 12333).

**W. Protective Services for the President and Others**

1. Component Workforce members MAY disclose PHI to authorized Federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056 or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879. (45 CFR §164.512(k)(3))

2. Component Workforce members MAY use and disclose PHI of individuals who are armed forces personnel for activities deemed necessary by appropriate military command authorities to assure proper execution of a military mission. Prior to use or disclosure, the appropriate military authority must have published by notice in the Federal Register the appropriate military command authority and the purposes for which the PHI may be used or disclosed. (45 CFR §164.512)
3. Foreign Military Personnel. Component Workforce members MAY use and disclose PHI of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register outlined above under the section entitled "Armed Forces Personnel." (45 CFR §164.512)
4. Component Workforce members MAY disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. §401) (45 C.F.R. §164.512(k)(2)).

**X. Disclosures for Worker's Compensation/Employer**

1. Upon the request of the employer, the carrier, an authorized, qualified rehabilitation provider, or the attorney for the employer or carrier, Component healthcare providers MUST disclose those medical records of the injured employee restricted to the conditions related to the workplace injury. ( Florida Statute§440.13(4)(c)).
2. Component Workforce members MAY use or disclose for the public health activities and purposes to an employer, protected health information about an employee of the employer, if the Health Care Component provides health care to the employee at the request of the employer:
  - a. To conduct an evaluation relating to medical surveillance of the workplace; or
  - b. To evaluate whether the patient/employee has a work-related illness or injury. The Health Care Component Workforce members may only use or disclose the employee PHI to the employer if:
    - a. The findings concern a work-related illness or injury or a workplace-related medical surveillance;
    - ii. The employer needs such findings in order to comply with its obligations, under the federal Department of Labor, Occupational Safety and Health Administration (OSHA) or under Florida state statutes having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and

- iii. The Component provides the patient/employee written notice at the time the health care is provided that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries will be disclosed to the employer.

**NOTE:** If the health care is provided on the work site of the employer, the employer may post the notice in a prominent place at the location where the health care is provided. ( Florida Statute 440.13 and Florida Statute 455.241)

**Y. Disclosures to Schools about an Individual who is a Student or Prospective Student of the School.**

1. Component Workforce members MAY disclose the protected health information about a patient limited to proof of immunization to a school required by Florida state statute or other law to have such proof of immunization prior to admitting the individual; and the Component obtains and documents the agreement to the disclosure from either:
  - a. A parent, guardian, or other person acting *in loco parentis* of the individual, if the individual is an unemancipated minor; or
  - b. The individual, if the individual is an adult or emancipated minor.

**NOTE:** Prior to entry, attendance or transfer to preschools, schools (K-12), licensed childcare facilities, and family daycare homes, each child MUST have on file with the Florida Department of Health a Florida Certification of Immunization, DH 680 Form documenting completion of required immunization.

(Public and Nonpublic Schools, Preschool, Kindergarten Through 12: section 1003.22, Florida Statutes, and Rule 64D-3.046, Florida Administrative Code.)  
(Licensed childcare facilities: section 402.305, Florida Statutes, and Rule 65C-22.006, Florida Administrative Code.)

**NOTE:** Component health care providers may access instructions online and the computerized DH Form 680 from the Florida SHOTS website at [www.flshots.com](http://www.flshots.com). All children should receive a completed personal immunization record, such as the DH 686 Form.

**Z. Correctional institutions and Other Law Enforcement Custodial Situations.**

1. Component Workforce members MUST disclose a patient's clinical records when the patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Family Services, and the Department of Corrections requests such records. (Florida Statute §394.4615(2); Florida Administrative Code R. 65E-5.250)

2. Component, Workforce members on their own initiative, MAY disclose protected health information to law enforcement as necessary for law enforcement to identify or apprehend an individual who has escaped from a correctional institution or from lawful custody. (45 C.F.R. §164.512(j)(1)(ii)(B)) Also, a covered entity may disclose protected health information about an inmate to a correctional institution or other custodial agency if such agency makes certain representations to the covered entity, as described under Discussion. (45 C.F.R. §164.512(k)(5))
3. Component Workforce members MAY disclose the requested protected health information a correctional institution or law enforcement agency having lawful custody of an individual if the agency represents that the information is needed for:
  - a. The provision of health care to such individual;
  - b. The health and safety of such individual or other inmates;
  - c. The health and safety of the officers or employees of, or others at, the correctional institution;
  - d. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
  - e. Law enforcement on the premises of the correctional institution; and
  - f. The administration and maintenance of the safety, security, and good order of the correctional institution. (45 C.F.R. §164.512(k)(5))

**AA. Disclosure to other healthcare providers.**

1. (See FIU Policy and Procedure #1640.025) (Minimum Necessary)

**BB. Covered Entities that are Government Programs Providing Public Benefits.**

1. Component Workforce members MAY disclose PHI relating to another covered entity that is a government agency administering a program providing public benefits if the programs serve the same or similar populations and the disclosure of PHI is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs. (45 CFR §164.512)

**NOTE:** Component Workforce members should only disclose the minimum necessary of PHI for this purpose or as required by law. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

**CC. Business Associate Use and Disclosure.**

1. (See Policy and Procedure #1660.015) (Business Associate Agreements),

**NOTE:** (FIU Policy and Procedure #1640.020) (Minimum Necessary)

**DD. For Disaster Relief.**

1. (See Policy and Procedure #1660.30) (Uses and Disclosures Requiring an Opportunity for the Patient to Agree or Object)

**NOTE:** (See FIU Policy and Procedure #1640.020) (Minimum Necessary)

**EE. Disclosing to Patients.**

1. (See Policy and Procedure #1660.050) (Patient Access to Protected Health Information)

**NOTE:** (FIU Policy and Procedure #1640.020) (Minimum Necessary)

**FF. Disclosing to Family Members or Friends Involved in Care.**

1. (See Policy and Procedure #1660.30) (Uses and Disclosures Requiring an Opportunity for the Patient to Agree or Object)

**NOTE:** (FIU Policy and Procedure #1640.020) (Minimum Necessary)

**GG. Requests from the Secretary of the Department of Health and Human Services.**

1. (See FIU Policy and Procedure #1660.095) (Reporting HIPAA Incidents and Notification in the Case of a Breach) and (FIU Policy and Procedure #1660.095) (Complaints Under the HIPAA Privacy Rule, Mitigation, Refraining from Intimidating or Retaliatory Acts, and Waiver)

**II. Exceptions to Disclosure Restrictions for Covered Program Workforce Members and Business Associates**

1. (See FIU Policy and Procedure #1660.045) (Right of Patients to Request Restrictions Regarding the Use and Disclosure of Their Protected Health Information)

See FIU Policy and Procedure #1660.015 (Business Associate Agreements)

**A. Whistleblowers.**

1. FIU will not sanction or retaliate against Workforce members or Business Associates who disclose patient PHI, provided:
  1. The Workforce member or Business Associate has a good faith belief that a Health Care Component engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided potentially endangered one or more patients, workers, or the public; and
  2. The disclosure is to:
    - a. A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the Health Care Component or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the Health Care Component; or
    - b. An attorney retained by or on behalf of the Workforce member or Business Associate for the purpose of determining the legal options of the Workforce member or Business Associate with regard to conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided potentially endangered one or more patients, workers, or the public.

**B. Workforce Member Victims of Crime**

1. Workforce members MAY disclose patient PHI, if the Workforce member is the victim of a criminal act and he/she discloses the PHI to a law enforcement official, provided that:
  - a. The PHI disclosed is about the suspected perpetrator of the criminal act; and
  - b. The PHI disclosed is limited to the suspected perpetrator's:
    1. Name and address;
    2. Date and place of birth;
    3. Social security number;
    4. ABO blood type and rh factor;
    5. Type of injury;
    6. Date and time of treatment;
    7. Date and time of death, if applicable;
    8. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos, and
  - c. The Workforce member did not disclose for the purposes of identification or location any PHI related to the suspected perpetrator's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.



**NOTE:** Other information related to the individual's DNA, dental records, body fluid or tissue typing, samples, or analysis cannot be disclosed under this provision, but may be disclosed in response to a court order, warrant, or written administrative request. (45 C.F.R. §164.512(j)(2))

### **III. Documentation**

1. Upon receipt of a request for disclosure as permitted or required by law, an opportunity for the patient to agree or object is not required, the Workforce member must:
  - A. Document in the patient's medical records:
    1. The date, name and title of the Workforce member who received the request for disclosure;
    2. The name and title of the individual or legal entity (third party) that made the request for disclosure of patient PHI;
    3. The date, name, and title of the Workforce member who completed delivery of the PHI;
    4. The method in which the PHI was delivered;
    5. The PHI disclosed;
    6. The name of the individual/legal entity (third party) to whom the PHI was disclosed,
    7. The method used to verify the authority and identify of the third party who made the request for disclosure of patient PHI (See Verification Policy and Procedure #1660.040), and
    8. The purposed/reason for the disclosure; if known.
  - B. Properly secure in the patient's medical records any and all written request or documentation received, and
  - C. Forward any and all other legal request for the access to or the disclosure of patient PHI (including, but not limited to Court Orders, Court Ordered Warrants, Subpoenas) to the Office of General Counsel for response and processing and document in the patient's medical records all activities and actions taken.
1. For permitted disclosures made by a Component Workforce member on his/her own volition, or by a Component Workforce member as required by law or regulation, the Privacy Coordinator/Workforce member must:
  - A. Document in the patient's medical records:
    1. The reason/basis for the disclosure;
    2. The date, name; and title of the Workforce member who made the disclosure;
    3. The name of the individual/legal entity (third party) to whom the disclosure was made;

4. The method of delivery of the PHI, and
5. The PHI disclosed;
- B. Properly secure in the patient's medical records any and all written communication or documentation created,
- C. Document in the patient's medical records:
  1. The date, name; and title of the Workforce member who created the written communication or documentation, if at all;
  2. The date, title and name of the third party to whom the written communication or documentation was delivered, if at all, and
  3. The purpose of the written communication or documentation.
- D. Properly secure in the patient's medical records any and all written communication or documentation received from the third party following their receipt of the disclosed PHI, if at all, and
- E. Document in the patient's medical records:
  1. The date, name; and title of the Privacy Coordinator/Workforce member who received the written communication or documentation, if at all, and
  2. The basis for the written communication or documentation received from the third party.

**NOTE:** Component Workforce members MUST maintain a record of all disclosures of information contained in patient medical records to a third party, including the purpose/reason of the disclosure. The record of disclosure may be maintained in the patient's Designated Record Set. (Florida Statute §456.057(11)) (FIU Policy and Procedure #1660.060) (Accounting of Disclosures)

#### **IV. 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 Office of Compliance and Integrity) 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)