



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
TBD	N/A	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 and state law.

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. (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 state law and regulation. (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 federal and state law and regulation in those instances in which an Authorization or providing the patient and opportunity to agree or object is not required.

45 CFR §164.512 (Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required)

DEFINITIONS

TERM	DEFINITIONS
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.
Authorization (HIPAA Authorization)	A specific type of permission given by the patient to use and/or disclose protected health information about the client.
Business Associate	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>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>Code of Federal Regulations</p>	<p>Also known as CFR</p>
<p>Component</p>	<p>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.</p>
<p>Correctional Institution</p>	<p>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.</p>
<p>Covered Entity</p>	<p>An entity that is subject to HIPAA.</p> <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. <p>Note: FIU, the legal entity, is the Covered Entity for HIPAA compliance purposes. FIU is a Hybrid Entity, only FIU</p>

	designated Components, to the extent it performs covered functions, are subject to HIPAA requirements.
Covered Functions	Means those functions of a covered entity the performance of which makes the entity a health plan, health care provider, or health care clearinghouse.
De-identified Data	<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"> 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 2. if stripped of all of the 18 direct identifiers defined under HIPAA: <ol style="list-style-type: none"> a. Name of client(s); 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); c. Dates (Date of Birth, Date of Death, Admission/ Discharge Dates); d. Ages (Over the age of 89 and any combination of date of birth that reveals an age 89 and over); e. Telephone numbers; f. Fax numbers; g. E-mail addresses; h. Social Security Numbers; i. Medical record numbers; j. Health plan beneficiary numbers; k. Account numbers; l. Certificate/License numbers; m. Vehicle identifiers and serial numbers (including license plate numbers); n. Device identifiers and serial numbers; o. Web universal resource locators (URLs); p. Internet protocol (IP) address numbers; q. Biometric identifiers including finger and voice prints; r. Full face photographic images and any comparable images; and s. Any other unique identifying number, characteristic or code, except a re-identification code.

	NOTE: HIPAA does not apply to de-identified data
Designated Record Set	Means: <ol style="list-style-type: none"> 1. A group of records maintained by or for a covered entity that is: <ol style="list-style-type: none"> a. The medical records and billing records about patients maintained by or for a covered health care provider; b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or c. Used, in whole or in part, by or for the covered entity to make decisions about patients. 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.
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.
Electronic Protected Health Information (ePHI)	PHI in electronic form. See also: <u>PHI</u> .
Emancipated Minor	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.”
Family Member	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.
Florida Statutes	Also known as F.S.
Health Care	Means the care, services, or supplies related to the health of a patient, including: <ol 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 Component	See "Component"
Healthcare 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.
U.S. Department of Health and Human Services	Also known as HHS.
Health Oversight Agency	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.
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.
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.
Inmate	Means a person incarcerated in or otherwise confined to a correctional institution.
Integrity	Means the property that data or information have not been altered or destroyed in an unauthorized manner.
Law Enforcement Official	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"> 1. Investigate or conduct an official inquiry into a potential violation of law; or 2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.
Minimum Necessary	Means the least amount of information possible to accomplish the intended purpose of the use, disclosure, or request.
Patient	The person who is the subject of the PHI
Personal Representative	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.
Privacy Coordinator	Means an FIU Workforce member, appointed by the director, manager, or supervisor of a HIPAA Designated Component to

	<p>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.</p>
Privacy Rule	<p>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.</p>
Protected Health Information (PHI)	<p>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:</p> <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.
Public Health Authority	<p>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.</p>
Record	<p>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.</p>
Records Owner	<p>Means any health care practitioner who generates a medical record after making a physical or mental examination of, or administering</p>

	<p>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.</p>
<p>Required by law</p>	<p>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.</p>
<p>Research</p>	<p>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:</p> <ul style="list-style-type: none"> (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 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 (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.
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	(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.
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.
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, 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 state laws and/or regulations 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
- F.S. §456.057
- F.S. §456.059
- F.S. §95.11
- F.S. §384.25
- F.S. §392.53
- F.S. §385.202
- F.S. §459.026
- F.S. §39.201
- F.S. §406.12
- F.S. §455.241
- F.S. §395.1027
- F.S. §415.1034
- F.S. §394.4615
- F.S. §790.24
- F.S. §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, or the appropriate Component Privacy Coordinator.

HISTORY

Effective Date: **/**/2020



**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
TBD	N/A	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 state laws and/or regulations 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 and state law 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. Components 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, Component Privacy Coordinators 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 law:
 - 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. (F.S. §384.25 and F.S. §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. (F.S. §384.25 and F.S. §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. (F.S. §385.202);
 - d. Each person MUST report adverse incidents involving medical treatment to the Florida Department of Health. (F.S. §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 F.S. §395.1027 and the professional organization that certifies poison control centers in accordance with federal law. (F.S. §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. (F.S. §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. (F.S. §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: Components 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. The Component Privacy Coordinators 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: Components 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. Components 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: Components 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

NOTE: The HIPAA Privacy Rule permits disclosure of patient PHI by Workforce members who reasonably believe the patient is a victim of abuse, neglect, or domestic violence. The Rule permits such disclosures to any governmental authority authorized by law to receive reports of such abuse, neglect, or domestic violence. Such disclosures can be made:

- A. If required by law and the disclosure complies with and is limited to the relevant requirements of such law and the individual is informed of the report;
- B. If the individual has agreed to the disclosure; or
- C. Without the individual's agreement if the disclosure is expressly authorized by statute or regulation and either:
 - 1. The Workforce member, in the exercise of its professional judgment, believes that the disclosure is necessary to prevent serious harm to the patient or to other potential victims; or
 - 2. If the patient is unable to agree due to incapacity, a law enforcement official or other public official authorized to receive the report represents that the protected health information is not intended to be used against the patient, and that an immediate enforcement activity that depends on the disclosure would be materially and adversely affected by waiting until the patient is able to agree to the disclosure. (45 C.F.R. §164.512(c)(1)(iii)(B))

NOTE: The HIPAA Privacy Rule also permits disclosure of PHI to specified authorities in abuse situations other than those involving child abuse and neglect. (45 C.F.R. §164.512(b)(1)(ii))

NOTE: The Florida Statutes identified below are more demanding than the HIPAA Privacy Rule identified immediately above. The relevant Florida Rules generally require the reporting and disclosure of patient PHI where HIPAA Rule permits but does not require disclosure or reporting. Workforce members MUST follow the Florida statutes in the following situations:

- 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. (F.S. §456.057) (F.S. §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. (F.S. §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. (F.S. §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. (F.S. §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. (Fla. Stat. §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. (F.S. §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: Components 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

(SEE Section I.D. **NOTES** above regarding the HIPAA Privacy Rule)

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. (Fla. Stat. §39.201(1)) and (F.S. §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. (F.S. §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. (F.S. §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. (F.S. §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. (F.S. §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: Components 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 law 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. (F.S. §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. (F.S. §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. (F.S. §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: Components 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: Components 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, Components 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 disclose 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. (F.S. §456.061)

NOTE: Components 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. (F.S. §395.3025(4)(d); Fla. Admin. Code R. 59A-3.270(7))
2. Patient records MUST be released in response to a court order or court ordered warrant. (F.S. §456.057);
3. Patient clinical records (Mental Health) MUST be release in response to a Court Order (F.S. §456.057)
4. 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, the clinical record MAY be released 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. (F.S. §916.107(8))

5. 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. (F.S. §397.501(7))

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)) A provider 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, patient records may be furnished 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. (F.S. §456.057)
2. To the 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. (F.S. §456.057)
3. There are three circumstances where the Component may disclose PHI 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 PHI 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 PHI 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 PHI has requested a qualified protective order.

NOTE: The Component may disclose PHI 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 MAY agree to provide the above-described notice to the patient or seek the above-described qualified protective order. (45 CFR §164.512)

NOTE: Components 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 F.S. §542.28 which defines civil investigative demands, although this is outside the allowed disclosure under F.S. §395.3025, F.S. §394.4615, and F.S. §456.057.

2. Components MAY disclose patient PHI 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: Components 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

Component disclosure of patient PHI to law enforcement officers as permitted or required by law.

1. Regarding suspicious deaths MUST be disclosed. (F.S. §415.1034(2) and (F.S. §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 F.S. §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. (F.S. §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. (F.S. §790.24)

5. In addition, state law requires the reporting of second and third-degree burns to the County Sheriff if they are believed to be caused by violence or unlawful activity. (F.S. §877.155)
6. State 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 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. (Fla. Stat. §397.501(7))
7. If a health care provider providing care in a health care facility 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 Fla. Stat. §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. (F.S. §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. (F.S. §794.027)

8. Components MAY alert law enforcement of the death of an individual when there is a suspicion that the death resulted from criminal conduct. (45 C.F.R. §164.512(f)(4))

NOTE: HIPAA 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 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)

9. 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, but with certain limitations. Components must limit disclosures of PHI to:
- name
 - address,
 - date and place of birth,
 - social security number,
 - ABO blood type and rh factor,
 - type of injury,
 - date and time of treatment,
 - date and time of death, and
 - a description of distinguishing physical characteristics, such as facial hair, scars, or tattoos.

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. 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))

10. Components MAY disclose patient PHI 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))
11. When responding to an off-site medical emergency, a Component 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. (45 C.F.R. §164.512(f)(6))
12. Components 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))

13. Components 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))

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: Components 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

- Components 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. The Director or Designee MAY disclose only the following information concerning patients who make statements about participating in violent crimes:
 - The statement (admitting participation in a violent crime);
 - Name and address;
 - Date and place of birth;
 - Social Security number;
 - ABO blood type and Rh factor;
 - Type of injury;
 - Date and time of treatment;
 - Date and time of death (if applicable);

- 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. (45 CFR §164.512)

NOTE: Components 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

Components 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, a Component MAY disclose protected health information to law enforcement in response to a request concerning a victim or suspected victim of a crime. The individual must agree to the disclosure. If the individual is incapacitated and cannot agree, the covered entity 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 covered entity believes in its professional judgment that doing so is in the best interests of the individual whose information is requested. (45 C.F.R. §164.512(f)(3))

NOTE: F.S. §456.057 require patient records to be kept confidential and allow disclosure only for the purposes that are expressly permitted.

NOTE: Components 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. State 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 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. (Fla. Stat. §397.501(7))
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. (Fla. Stat. §794.027)
3. Components 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))
4. 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. F.S. §843.06

NOTE: Components 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. A Component 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 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

1. 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. The Component MUST limit disclosures of protected health information to:
 - a. name and address;
 - b. date and place of birth;
 - c. social security number;
 - d. ABO blood type and rh factor;
 - e. type of injury;
 - f. date and time of treatment;
 - g. date and time of death, and
 - h. a description of distinguishing physical characteristics, such as facial hair, scars, or tattoos.

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. 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. The Director or Designee of a Covered program may disclose PHI to a law enforcement official about a patient who has died for the purpose of alerting law enforcement of the death of the patient if the Covered Program has a suspicion that such death may have resulted from criminal conduct.

NOTE: 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 immediately below.

R. Medical Examiners

1. Components 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. (F.S. §406.11)
3. Components MUST report the death of any person as a result of criminal violence, accident, suicide, sudden and in good health, unattended by a health care provider, in police custody, under suspicious or unusual circumstances, by criminal abortion, poisoning, disease constituting a threat to public health, disease, and injury or toxic agent resulting from employment to the Medical Examiner. (F.S. §406.12)
4. Components MUST report the death of a child suspected as a result of abuse, abandonment, or neglect, to the Medical Examiner. (F.S. §39.201)

5. HIPAA explicitly permits Components to “disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining cause of death, or other duties authorized by law.” (45 CFR §164.512(g)(1)) In addition, Components may alert law enforcement of the death of an individual when there is a suspicion that the death resulted from criminal conduct. (45 CFR §164.512(f)(4))

S. Funeral Directors

1. The Components may disclose PHI to funeral directors consistent with applicable law and as necessary to carry out their duties with respect to the decedent. The Components 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. Components 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: Components 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. Components 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 (F.S. 456.057) or as approved by the Institutional review Board for those researchers not required to comply with the requirements of F.S. 456.057.

V. National Security and Intelligence Activities.

1. Components 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. Components 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. Components 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. FIU 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. Components 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, a Health Care Component (healthcare providers) MUST disclose those medical records of the injured employee restricted to the conditions related to the workplace injury. (F.S. §440.13(4)(c)).
2. A Health Care Component 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 may only use or disclose the employee PHI to the employer if:
 - i. 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 state law 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. (F.S. 440.13 and F.S. 455.241)

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

- 1. A Component MAY disclose the protected health information about a patient limited to proof of immunization to a school required by State 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. 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. Components 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. (F.S. §394.4615(2); Fla. Admin. Code R. 65E-5.250)
2. Components, on its 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. Components 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. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

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

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

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

DD. For Disaster Relief.

1. (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. (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. (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. (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 Workforce members, Business Associates, and students must refrain from intimidation and retaliation against any individual or other person for:
 - Filing a complaint with the Secretary of the federal Department of Health and Human Services
 - Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing; or
 - Opposing any act or practice made unlawful by the HIPAA Privacy or Security Rules, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of PHI.

NOTE: 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. FIU will not sanction or retaliate against Workforce members who discloses 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 Privacy Coordinator must:
 - A. Document in the patient's Designated Record Set:
 - 1. The date, name and title of the Privacy Coordinator 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 Privacy Coordinator 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 #____), and
 8. The purposed/reason for the disclosure; if known.
- B. Properly secure in the patient's Designated Record Set 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 Designated Record Set all activities and actions taken.
1. For permitted disclosures made by a Component on its own volition, or by a Component as required by law or regulation, the Privacy Coordinator must:
 - A. Document in the patient's Designated Record Set:
 1. The reason/basis for the disclosure;
 2. The date, name; and title of the Privacy Coordinator 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 Designated Record Set any and all written communication or documentation created,
 - C. Document in the patient's Designated Record Set:
 1. The date, name; and title of the Privacy Coordinator 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 Designated Record Set 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 Designated Record Set:
 1. The date, name; and title of the Privacy Coordinator 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: Components MUST maintain a record of all disclosures of information contained in patient Designated Record Sets 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. (F.S. §456.057(11)) (FIU Policy and Procedure #1660.060) (Accounting of Disclosures)

NOTE: Components/Privacy Coordinators MUST only disclose the minimum amount of PHI necessary to accomplish the purpose of the disclosure, or as required by law, or as specified in the subpoena or other legal request. (FIU Policy and Procedure #1640.020) (Minimum Necessary)

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)