



**Use and Disclosure of Patient Protected Health Information Requiring an Opportunity for the Patient to Agree or Object.**

- **Use and Disclosure for Facility Directory and to the Clergy**
- **Use and Disclosure to Individuals Involvement in the Patient's Care and Notification Purposes #1660.030**

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

**POLICY STATEMENT**

Florida International University's (FIU) Health Insurance Portability and Accountability Act (HIPAA) Hybrid Designated Health Care Components (Components) may use and disclose patient protected health information (PHI), provided that the patient is informed in advance of the use or disclosure and has the opportunity to agree to, prohibit, or restrict the use or disclosure for directory purposes, to members of the clergy, to other persons who may ask for the patient, to individual's involved in the patient's care and for notification purposes, to individuals present or otherwise prior to a use or disclosure, when the patient is not present, for disaster relief purposes, and when the patient is deceased.

**NOTE:** FIU Health Care Components do not use facility directories or clergy.

Components may orally inform the patient of and obtain the patient's oral agreement or objection to a use or disclosure to other persons who may ask for the patient, to individual's involved in the patient's care and for notification purposes, to individuals present or otherwise prior to a use or disclosure, when the patient is not present, for disaster relief purposes, and when the patient is deceased.

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)

Component Workforce members who fail to adhere to this policy and procedure may be subject to civil and criminal penalties as provided by law, and/or administrative and disciplinary action. (FIU Policy and Procedure #1660.085) (Sanctions)

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

FIU reserves the right to amend, change or terminate this policy and procedure at any time, either prospectively or retroactively, without notice. Any ambiguities between this policy and procedure and the other policies and procedures should be accordingly made consistent with the requirements of HIPAA 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

The intent of this policy is to address the specific and limited uses of patient Protected Health Information (PHI) for uses and disclosures for facility directories, clergy, uses and disclosures to individuals involved in the patient's care, and for notification purposes.

#### DEFINITIONS

TERM	DEFINITIONS
<b>Availability</b>	Means the property that data or information is accessible and useable upon demand by an authorized person.
<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>Business Associate</b>	<p>Generally an entity or person who performs a function involving the use or disclosure of Protected Health Information (PHI) on behalf of a covered entity (such as claims processing, case management, utilization review, quality assurance, billing) or provides services for a covered entity that require the disclosure of PHI (such as legal, actuarial, accounting, accreditation).</p> <p><b>NOTE:</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>NOTE:</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>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>

	3. a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.
<b>Designated Record Set</b>	<p>1. A group of records maintained by or for a covered entity that is:</p> <ul 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> </ul> <p>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.</p>
<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>Family Member</b>	<p>Means, with respect to an individual:</p> <p>(1) A dependent (as such term is defined in 45 CFR 144.103), of the individual; or</p> <p>(2) Any other person who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual or of a dependent of the individual. Relatives by affinity (such as by marriage or adoption) are treated the same as relatives by consanguinity (that is, relatives who share a common biological ancestor). In determining the degree of the relationship, relatives by less than full consanguinity (such as half-siblings, who share only one parent) are treated the same as relatives by full consanguinity (such as siblings who share both parents).</p> <ul style="list-style-type: none"> <li>(i) First-degree relatives include parents, spouses, siblings, and children.</li> <li>(ii) Second-degree relatives include grandparents, grandchildren, aunts, uncles, nephews, and nieces.</li> <li>(iii) Third-degree relatives include great-grandparents, great-grandchildren, great aunts, great uncles, and first cousins.</li> <li>(iv) Fourth-degree relatives include great-great grandparents, great-great grandchildren, and children of first cousins.</li> </ul>
<b>Florida Statutes</b>	Also known as F.S. are the codified, statutory laws of Florida
<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>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. people and providing essential human services.
<b>HIPAA</b>	Means the Health Insurance Portability and Accountability Act of 1996.
<b>Hybrid Covered Entity/Program</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>Minimum Necessary</b>	Means the limit use, disclosure, or request of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
<b>Patient</b>	The person who is the subject of the PHI.
<b>Permitted</b>	Means health care providers <u>may</u> , but are not required to, use or disclose patient PHI without authorization for its own treatment, payment, or healthcare operations (except for marketing purposes), and, in most cases, for treatment, payment and healthcare operations of other covered entities.
<b>Person</b>	Means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
<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>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>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 and procedures.
  - Develops and maintains HIPAA health care Privacy Rule training modules and ensures appropriate Workforce members complete the required training.
  - Performs audits and assessments of the Components to ensure their compliance with the Privacy Rules and associated FIU Policies and Procedures.



- Partners with the Division of Information Technology HIPAA Security Officer to ensure compliance with all federal and state healthcare privacy and security laws, regulations rules, and ordinances.

## **2. HIPAA Components:**

- Each FIU HIPAA Hybrid Designated Health Care Component (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 or required disclosures for directory purposes, to members of the clergy, to individual's involved in the patient's care, for notification purposes, to individuals present or otherwise prior to a use or disclosure, when the patient is not present, for disaster relief purposes, and when the patient is deceased.

## **RELATED RESOURCES**

### **References**

- 45 CFR §164.502
- 45 CFR §164.504
- 45 CFR §164.506
- 45 CFR §164.508
- 45 CFR §164.510
- 45 CFR §164.512
- 45 CFR §164.514
- 45 CFR §164.522
- 45 CFR §164.530
- Florida Statute §456.057
- Florida Statute §95.11

### **Related Policies**

- FIU Policy # 1610.005 (Designated Health Care Components of FIU Community)
- FIU Policy and Procedure #1660.075 (HIPAA Privacy and Security Rule Training)
- FIU Policy and Procedure #1660.070 (Designation of HIPAA Privacy Officer and Component Privacy and Security Coordinators)
- FIU Policy and Procedure #1660.015 (Business Associate Agreements)
- FIU Policy and Procedure #1640.025 (Minimum Necessary)
- FIU Policy and Procedure #1660.025 (Use and Disclosures of Patient Protected Health Information for Which an Authorization or Opportunity to Agree or Object is NOT Required)
- FIU Policy and Procedure #1660.001 (Representatives)



- FIU Policy and Procedure #1660.040 (Verification)
- FIU Policy and Procedure #1660.080 (Policies and Procedures, Changes to Policies and Procedures, and Documentation)
- FIU Policy and Procedure #1660.085 (Sanctions)

## 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 made to document*): October 13, 2020; February 29, 2024.





**Use and Disclosure of Patient Protected Health Information Requiring an Opportunity for the Patient to Agree or Object.**

- Use and Disclosure for Facility Directory and to the Clergy
- Use and Disclosure to Individuals Involvement in the Patients Care and for Notification Purposes #1660.030a

INITIAL EFFECTIVE DATE:	LAST REVISION DATE:	RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT
October 13, 2020	February 9, 2024	Office of Compliance and Integrity

**PROCEDURE STATEMENT**

**I. Facility Directory and Clergy**

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 use and disclosure of patient PHI to individuals involved in the patient's care and for notification purposes. Privacy Coordinators may delegate and share duties and responsibilities with Workforce members as necessary and appropriate but retain oversight responsibility. (See FIU Policy and Procedure #1660.070) (Designation of HIPAA Privacy Officer and Component Privacy and Security Coordinators)

**NOTE:** FIU Healthcare Components do not use a directory or the clergy. If in the future, if a Component(s) elects to begin using a directory and/or the clergy, the Privacy Coordinator will advise the Director of Compliance and Privacy for Health Affairs, Office of Compliance and Integrity of the change and this policy and procedure will be updated accordingly. (See FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)

**II. Uses and Disclosures of Patient PHI to Individuals Involved in the Patient's Care or Health Care Payments When the Patient is Present**

- A. Component Workforce members may disclose patient PHI to:
1. A family member.
  2. Other relative.
  3. Close personal friend of a patient, or

4. Any other person identified by the patient, the PHI directly relevant to such individual's involvement with the patient's health care or payment related to the patient's health care. (See Section II.C. below).

- B. Component Workforce members may also use or disclose patient PHI to notify, or assist in the notification of (including identifying or locating):

1. A family member.
2. A personal Representative of the patient, or
3. Another person responsible for the care of the patient and of the patient's:
  - a. Location.
  - b. General condition, or
  - c. Death.

- C. If the patient is present for, or otherwise available prior to, a use or disclosure permitted by Section II.A. above, and has the capacity to make healthcare decisions, Component Workforce members may use or disclose the patient's PHI if:

1. The patient agrees.
2. The patient is provided the opportunity to object to the disclosure, and the patient does not express an objection, or
3. It is reasonably to infer from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure.

- D. The Component Workforce member(s) who made the disclosure must document in the patient's medical records:

1. The date, name, and title of the Workforce member who made the disclosure.
2. The verbal exchange.
3. The basis for the judgement in disclosing the patient's PHI to others, and
4. The relationship of the individual(s) to whom the disclosure was made.

### **III. Limited Uses and Disclosures When the patient is not present, incapacitated, or an emergency circumstance**

- A. Component Workforce members may, in the exercise of professional judgment, determine whether the disclosure of a patient's PHI is in the best interests of the patient, and if so, disclose only the PHI that is directly relevant to:

1. A family member's.
2. Other relative's.
3. Close personal friend of the patient, or
4. Any other person identified by the patient as someone who is involved with the patient's care or payment related to the patient's health care or who is needed for notification purposes.

**NOTE:** Component Workforce member may use professional judgment and experience to make reasonable inferences of the patient's best interest in allowing a person to act on behalf of the patient to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of PHI.

- B. The Component Workforce member(s) who make a disclosure must document in the patient's medical records:
1. The date, name, and title of the Workforce member who made the disclosure.
  2. The verbal exchange.
  3. The PHI or items disclosed.
  4. Whether the patient was present or incapacitated.
  5. The basis for the judgement in using or disclosing the patient's PHI to others, and
  6. The relationship of the individual(s) to whom the use or disclosure was made.

**NOTE:** In Emergency Situations, the Component Workforce member(s) must document in the patient's medical records:

1. Date, name, and title of the Workforce member who made the disclosure.
2. Patient's incapacity or emergency circumstance.
3. PHI disclosed.
4. Name(s) of the individual(s) to whom the PHI was disclosed, and
5. Nature of the relationship.

#### **IV. Uses and Disclosures for Disaster Relief Purposes**

- A. Component Workforce members may use or disclose patient PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures of PHI to notify, or assist in the notification of (including identifying or locating):
1. A family member.
  2. A personal representative of the patient, or
  3. Another person responsible for the care of the patient.
  4. Information about the of the patient's:
    - a. Location.
    - b. General condition, or
    - c. Death.

**NOTE:** Any such use or disclosure of PHI for such notification purposes must be in accordance with the requirements that apply depending on whether the patient is present, incapacitated or involved in an emergency situation as discussed above Sections II and III, or where the patient is deceased as discussed immediately below in Section V, unless the Component Workforce member, in the exercise of professional judgment, determines the requirements interfere with the ability to respond to the emergency circumstances.

- B. The Component Workforce member(s) who made the disclosure must document in the patient's medical records:
1. The date, name, and title of the Workforce member(s) who made the disclosure.
  2. The verbal exchange.
  3. The PHI.
  4. Whether the patient was present or incapacitated.
  5. The basis for the judgement in using or disclosing the patient's PHI to others, and
  6. The public or private entity authorized by law or by its charter to assist in disaster relief efforts to whom the PHI was disclosed.

**V. Uses and disclosures when the individual is deceased**

- A. If the patient is deceased, Component Workforce member(s) may disclose to the patient's:
1. Family members.
  2. Other relatives.
  3. Other individual(s) responsible for the care of the patient, or
  4. Any other individual identified by the patient, who was involved in the patient's care or payment for health care prior to the patient's death, PHI of the patient that is relevant to such individual's involvement, unless doing so is inconsistent with any prior expressed preference of the patient that is known to the Component where the patient received healthcare.
- B. The Component Workforce member(s) must document in the patient's medical records the:
1. Date, name, and title of the Workforce member(s) who made the disclosure.
  2. Verbal exchange.
  3. PHI disclosed, and
  4. Relationship of the individual(s) to whom the disclosed was made.

**NOTE:** Unless a use of disclosure is required by law, all uses and disclosures of patient PHI as identified above are permissible, but not required.

**NOTE:**

1. Unless otherwise authorized by the patient, Component Workforce members must only disclose the minimum necessary amount of information necessary to the individual(s) or entity as described above in Sections II-V. (FIU Policy and Procedure #1640.025) (Minimum Necessary)
2. When the patient is otherwise not available as described above Sections II-V, Component Workforce members must verify the identify and authority of an



individual(s) or entity to whom PHI is disclosed. (FIU Policy and Procedure #1660.040) (Verification) and (FIU Policy and Procedure #1660.001) (Representatives)

**VI. Record/Documentation Retention**

- A. If a communication, action, activity, or designation is required to be documented in writing, the document or record owner (e.g., The Center for Children and Families) 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)