



**Use and Disclosure of Patient Protected Health Information for  
Fundraising Purposes #1660.035**

<b>INITIAL EFFECTIVE DATE:</b>	<b>LAST REVISION DATE:</b>	<b>RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT</b>
September 1, 2009	October 13, 2020	Office of Compliance and Integrity

**POLICY STATEMENT**

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the Health Information Technology for Economic and Clinical Health Act (HITECH) regulations permit limited uses and disclosures of protected health information (PHI) for fundraising activities on behalf of a covered entity without patient authorization. Florida International University (FIU) is a covered entity and follows the HIPAA and HITECH regulations regarding when patients must provide written authorization for the use and disclosure of their protected health information (PHI) for fundraising activities.

FIU HIPAA Hybrid Designated Health Care Components (Components) and the FIU Foundation are permitted to only use and disclose limited information consisting of demographic information and dates of service for fundraising purposes of the Component(s) in narrow circumstances described below.

1. Disclosures must be specifically set forth in the Component’s Notice of Privacy Practices.
2. The disclosure can only be to the Component, a Business Associate of the Component, or an institutionally related foundation for the purpose of fundraising for the benefit of the Component only.
4. All fundraising materials must include information about how the recipient (i.e., patient) of the information may opt out of future fundraising communications. If the recipient opts out, FIU and its business associates may not send the recipient (patient) further fundraising communications.

FIU, it’s Components and Business Associates cannot use or disclosure patient PHI for any other fundraising activities without first obtaining a written authorization from the patient.

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 FIU 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. (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**

The policy applies to the FIU 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 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 and disclosures of patient Protected Health Information (PHI) for fundraising purposes and activities and when a patient written authorization for uses and disclosure is required.

45 CFR §164.514 (Other Requirements Relating to the Uses and Disclosures of Protected Health Information)

DEFINITIONS	
TERM	DEFINITIONS
<b>Administrative Officer</b>	Means the Component Workforce member responsible for financial management, human resources administration, management of facilities and equipment, and other administrative functions required to support the teaching and research missions of the FIU HIPAA Hybrid Designated Health Care Component. The Administrative Officer is the senior administrative staff position in the department, Division or Office and provides continuity as academic leadership changes.
<b>Authorization</b>	Means an individual’s written permission to allow a covered entity to use or disclose specified PHI for a particular purpose. Except as otherwise permitted by the HIPAA Privacy Rule, a covered entity may not use or disclose PHI for research purposes without a valid Authorization.
<b>Availability</b>	Means the property that data or information is accessible and useable upon demand by an authorized person.
<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
<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>Confidentiality</b>	Means data or information is not made available or disclosed to unauthorized persons or processes.
<b>Covered Entity</b>	An entity that is subject to HIPAA. <ol style="list-style-type: none"> <li>1. a health plan;</li> <li>2. a health care clearinghouse; and/or</li> <li>3. a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.</li> </ol>
<b>Demographic Information</b>	Means a name, address and other contact information, age, gender, and date of birth. The term does not include any information about the illness or treatment.
<b>Disclosure</b>	Means the release, transfer, provision of access to, or divulging in any other manner of protected health information outside of the entity holding the information.
<b>Electronic Protected Health Information (ePHI)</b>	PHI in electronic form. See also: <a href="#">PHI</a> .
<b>Florida International University Foundation</b>	The Institutionally Related Foundation that performs fundraising activities for Florida International University.
<b>Florida Statutes</b>	Also known as F.S.
<b>Fundraising</b>	Means a communication by or on behalf of a Covered Entity or a business associate on behalf of the Covered Entity for the purpose of raising funds for the Covered Entity, including donations, appeals, or sponsorship of events, but not royalties or remittances for sale of products. Fundraising communication is a solicitation for funds and can be in writing or oral. An acknowledgement or thank you letter for receipt of a donation or update of current development project without request for additional donation would NOT be a fundraising communication. An event invitation that includes a request for a donation to attend an event, would be a fundraising communication.
<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</li> </ol>

	<p>mental condition, or functional status, of a patient or that affects the structure or function of the body; and</p> <p>2. sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.</p>
<b>Health Care Component</b>	See "Component"
<b>U.S. Department of Health and Human Services</b>	Also known as HHS.
<b>Health Information</b>	Means any information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an patient; the provision of health care to an patient; or the past, present, or future payment for the provision of health care to an patient.
<b>HIPAA</b>	Means the Health Insurance Portability and Accountability Act of 1996.
<b>HITECH Act</b>	Health Information Technology for Economic and Clinical Health Act.
<b>Hybrid Covered Entity</b>	Means a single legal entity that performs both covered and non-covered functions. The entity has a defined health care component that engages in HIPAA electronic transactions.
<b>Integrity</b>	Means the property that data or information have not been altered or destroyed in an unauthorized manner.
<b>Institutionally Related Foundation</b>	Means a foundation that qualifies as a nonprofit charitable foundation under section 501(c)(3) of the Internal Revenue Code and that has in its charter statement of charitable purposes an explicit linkage to the covered entity. The Florida International University Foundation is the institutionally related fundraising foundation for the Florida International University Health Care Components.
<b>Minimum Necessary Standard</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>Opt-out</b>	Means to choose not to participate in a program or not to receive information about a particular product or service.
<b>Patient</b>	The person who is the subject of the PHI.
<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. (FIU Policy and Procedure #1660.070) (Designation of Component Privacy and Security Coordinators)
<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>Privacy Rule</b>	The regulations at 45 CFR 160 and 164, which detail the requirements for complying with the standards for privacy under the administrative simplification provisions of HIPAA.
<b>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.

<b>ROLES AND RESPONSIBILITIES</b>	
1. <b>Compliance Oversight:</b>	The Office of University Compliance and Integrity (University Compliance) <ul style="list-style-type: none"> <li>• Evaluates all federal and state healthcare privacy laws, regulations, rules and ordinances (Rules) to ensure compliance with the Rules</li> <li>• Creates and maintains all required University-wide health care Privacy Rule policies, procedures and associated forms</li> <li>• Develops and maintains HIPAA health care Privacy Rule training modules and ensures appropriate Workforce members complete the required training</li> <li>• Performs audits and assessments of the Components to ensure their compliance with the Privacy Rules and associated FIU Policies and Procedures.</li> <li>• 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.</li> </ul>

**2. HIPAA Components:**

- 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 use and disclosure of patient PHI for fundraising purposes and activities.

**3. FIU Foundation and/or Business Associates:**

- Assist in coordination all fundraising activities involving the use and disclosure of patient PHI.
- Assist with obtaining patient Marketing and Fundraising Authorizations as required.
- Retain and safeguard the Marketing and Fundraising Authorizations as required under the HIPAA Privacy and Security Rules.
- Offer a toll-free number, an e-mail address, a web page, or similar opt-out mechanisms that are simple, quick and low or no cost to the patient.
- Assist with the use of patient PHI, including disease or condition information, without patient authorization, to develop mailing lists for purposes of identifying patients to whom a Marketing and Fundraising Authorization for use of PHI for fundraising should be sent.

**RELATED RESOURCES**

**References**

- 45 CFR §164.502
- 45 CFR §164.504
- 45 CFR §164.508
- 45 CFR §164.514
- 45 CFR §164.520
- 45 CFR §164.530
- F.S. §456.057
- F.S. §95.11

**Related Policies and Procedures**

- FIU Policy # 1610.005 (Designated Health Care Components of FIU Community)
- FIU Policy and Procedure #1660.070 (Designation of HIPAA Privacy Officer and Component Privacy and Security Coordinators)
- FIU Policy and Procedure #1660.075 (HIPAA Privacy and Security Rule Training)



- FIU Policy and Procedure #1660.015 (Business Associate Agreements)
- 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 #1660.085 (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), or the appropriate Component Privacy Coordinator.

**HISTORY**

**Initial Effective Date:** September 1, 2009  
**Review Dates** (review performed, no updates): n/a  
**Revision Dates:** December 13, 2017; October 13, 2020





**Use and Disclosure of Patient Protected Health Information for  
Fundraising Purposes #1660.035a**

<b>INITIAL EFFECTIVE DATE:</b>	<b>LAST REVISION DATE:</b>	<b>RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT</b>
September 1, 2009	October 13, 2020	Office of Compliance and Integrity

**PROCEDURE STATEMENT**

**I. Fundraising**

Each HIPAA 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 regulations governing the confidentiality, integrity and availability of PHI and electronic PHI (ePHI), including, but not limited to fundraising to patients. 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)

- A. All fundraising for FIU HIPAA Components that involves the use and disclosure of patient PHI and requires patient authorization must be done through the FIU Foundation, which is both an Institutionally Related Foundation and a Component of the FIU HIPAA Hybrid Designation.
- B. Requirements of the Privacy Rule of HIPAA and HITECH for Use and Disclosure of PHI for Fundraising by FIU HIPAA Components.
  - 1. Fundraising Requiring Patient Written Authorization. If an FIU HIPAA Component desires to use or disclose any PHI of a patient other than as described below in Section I.B.2. for fundraising purposes, this may be done only after the patient has authorized the Use and/or Disclosure by completing an Authorization for Use and Disclosure of Medical Information for Marketing/Promotion or Fundraising Activities (Marketing and Fundraising Authorization) (See Section III below). All such fundraising must be done in coordination with the FIU Foundation. The FIU Foundation will assist in obtaining the needed patient Marketing and Fundraising Authorizations for this type of fundraising and retain and safeguard the Marketing and Fundraising Authorizations as required under the HIPAA Privacy and Security Rules.

2. Fundraising that Does Not Require Patient Written Authorization. Fundraising that does not involve the use or disclosure of patient PHI by the FIU Foundation or that involves the use or disclosure by an FIU Health Care Component of only that information described below in Section I.B.2.b. does not require patient authorization.
  - a. Fundraising Not Involving the Use or Disclosure of Patient PHI by the FIU HIPAA Component.
    - i. If an individual (patient, family, or friend) approaches an FIU Workforce member and requests information about how to donate, this information may be provided and/or the donation accepted without any authorization. When individuals spontaneously donate, not in response to a fundraising solicitation, this donation is not covered by the HIPAA Privacy Rule.
  - b. Fundraising Involving the Use or Disclosure of Demographic Information and Other Limited Information as Described Below to an Institutionally Related Foundation (FIU Foundation) or Business Associate.
    - i. Without the patient's written authorization, the FIU Health Care Components may use internally or disclose to the FIU Foundation or Business Associate (FIU Policy and Procedure #1660.015) (Business Associate Agreements), for fundraising on its behalf:
      1. Demographic information (as defined in the Policy Statement);
      2. Dates of health care provided to the patient;
      3. Department of service (e.g., cardiology, pediatrics);
      4. The name of the treating health care provider(s);
      5. Outcome information (including death or sub-optimal treatment);
      6. Health insurance status (not defined in the Privacy Rule but interpreted to mean whether patient is insured and type of insurance).
    - ii. The FIU HIPAA Component Notice of Privacy Practices (See FIU Policy and Procedure #1640.015 (Notice of Privacy Practices (NPP) Distribution and Acknowledgement) must contain a statement that the FIU HIPAA Health Care Component may contact the patient to raise funds for the FIU HIPAA Health care Component and describe the patient's right to opt out of receiving communications. The actual opportunity to opt out is not required to be provided presolicitation.
    - iii. Each fundraising communication must provide the patient with a clear and conspicuous opportunity to opt out of receiving any further

fundraising communications. The method for opt out must not require the patient to incur an undue burden or more than a nominal cost. The FIU Foundation and FIU Health care Component should consider offering a toll-free number, an e-mail address, a web page, or similar opt-out mechanisms that are simple, quick and low or no cost to the patient.

**NOTE:** Requiring a patient to send a written letter opting out of fundraising communications would constitute an undue burden, although including a pre-printed, pre-paid, business reply postcard or directing a patient to an opt-out on a web page would be permitted.

- iv. The FIU Health Care Components, FIU Foundation, and Business Associates may permit general opt-out for all future communications, or to a particular fundraising campaign. Once implemented, however, the FIU Health Care Component, FIU Foundation, and Business Associate must not send such further fundraising communications.
- v. The FIU Health Care Components, FIU Foundation, and Business Associates will not condition treatment or payment on the patient's choice concerning the receipt of further communications related to fundraising.
- vi. The FIU Health Care Components, FIU Foundation, and Business Associates may not make fundraising communications to a patient who has opted out of receiving such communications.
- vii. Patients who have opted out of receiving fundraising communications may be given the opportunity to opt back in, but only through an affirmative step to opt back in (e.g., an opt out may not lapse after a period of time).

C. Mailing Lists.

- 1. FIU Health Care Components, FIU Foundation, and Business Associates may use PHI, including disease or condition information, without patient authorization, to develop mailing lists for purposes of identifying patients to whom a Marketing and Fundraising Authorization should be sent.

D. Minimum Necessary.

- 1. FIU Health Care Components, FIU Foundation, and Business Associates must identify and use or disclose only the minimum amount of PHI necessary (minimum necessary) for fundraising purposes. (FIU Policy and Procedure #1640.025) (Minimum Necessary)

E. Educational Events Co-Sponsored with a Third Party.

1. FIU Health Care Components may offer educational or awareness campaigns co-sponsored by a third party (e.g., American Heart Association) or include speakers or information from such third parties.
2. FIU Health Care Components, the FIU Foundation, and Business Associates however, are prohibited from sharing patient PHI with the third party or permitting the third party to use any FIU Health Care Component, FIU Foundation, and Business Associate patient mailing lists or permitted Fundraising PHI to send co-sponsored fundraising solicitations.
3. FIU Health Care Components, the FIU Foundation, and Business Associates will not include third party fundraising information within the event's communications. (e.g., invitation, brochure or similar communication tools).
4. At the event, the third party may invite patients to provide their contact information in writing, such as a sign up log, that clearly identifies the third party request to contact the patients attending the event, including the possibility that they will be contacted for the third-party's own fundraising efforts.
5. No fundraising related to the third party will occur at the event.

II. Record/ Documentation Retention

- A. The FIU Health Care Component Privacy Coordinator, FIU Foundation, and Business Associates must retain all documentation for seven (7) years from the date of its creation or the date when it was last in effect, whichever is later. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)

III. Form

- Authorization for Use and Disclosure of Medical Information for Marketing/Promotion or Fundraising Activities.