



**Use and Disclosure of Super-Confidential Protected Health Information #1660.150**

<b>INITIAL EFFECTIVE DATE:</b>	<b>LAST REVISION DATE:</b>	<b>RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT</b>
November 7, 2023	November 7, 2023	Office of University Compliance and Integrity

**POLICY STATEMENT**

Florida International University’s (FIU) Health Insurance Portability and Accountability Act (HIPAA) Hybrid Designated Healthcare Components (Components/Units) may not use or disclose patient protected health information (PHI) not otherwise permitted or required by the HIPAA Privacy Rule, other federal regulations, and Florida state statutes without first obtaining patient authorization that is valid under this policy and procedure. When a Component/Unit receives a valid authorization for its use and/or disclosure of PHI, such use or disclosure must be done consistent with such authorization.

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 University Compliance and Integrity. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)

Florida International University (FIU) follows all federal regulations and Florida state statutes and regulations regarding Super-Confidential Protected Health Information (PHI) created, received, maintained, used, disclosed, or transmitted by FIU in any format.

The disclosure of Super-Confidential Medical Records/PHI:

- Requires specific written authorization from the patient or the patient’s legally authorized representative (Representative) identifying the specific Super-Confidential Medical Records/PHI to be used or disclose,
- Will not be made pursuant to a General Authorization,
- Requires that Super-Confidential Medical Records/PHI disclosed for statistical and research purposes must be abstracted in such a way as to protect the identity of the individual, unless a specific written authorization is obtained from the patient or the patient’s Representative.
- Must be made to appropriate state or federal agencies as required by law, or
- Must be made in response to a Court Order requiring disclosure as required by federal and Florida state statutes.



All FIU Workforce members shall receive mandatory HIPAA Privacy and Security Rule training, as well as relevant federal and Florida state statute training in support of FIU's commitment to the proper use, disclosure, and safeguarding of PHI, including Super-Confidential PHI, from any intentional, unintentional, or incidental use or disclosure to unauthorized individuals.

Workforce members who fail to adhere to this policy and procedure may be subject to criminal and civil penalties as provided by law, and administrative and disciplinary action, including, but not limited to termination of employment or expulsion. Violations will be handled through FIU disciplinary policies applicable to employees and students. FIU may also refer suspected violations of applicable law to appropriate licensing and law enforcement agencies.

Each Component/Unit must designate a Privacy Liaison/Coordinator responsible for overseeing and ensuring the Component's/Unit's implementation and compliance with the HIPAA Privacy Rule, HITECH, the Omnibus Rules, FIU's associated HIPAA Privacy Policies and Procedures, and any applicable federal regulations and Florida state statutes and regulations governing the confidentiality, integrity and availability of PHI and electronic PHI (ePHI), including, but not limited to Super-Confidential PHI.

Each Component/Unit must notify the Director of Compliance and Privacy for Health Affairs, Office of Compliance and Integrity, the name and title of their designated HIPAA Privacy Liaison/Coordinator.

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, HITECH, the Omnibus Rule, FIU's associated HIPAA Privacy Policies and Procedures, and any applicable federal regulations and Florida state statutes and regulations. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)

#### SCOPE

This policy applies to the Healthcare Components/Units 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 procedure and FIU Policy and Procedure #1660.015 regarding Business Associate Agreements.



**REASON FOR POLICY**

The reason for this policy is to provide guidance and direction on the use and disclosure of Super-Confidential PHI and addresses the specific and limited uses and disclosures of patient Super-Confidential Protected Health Information (PHI) for purposes not related to treatment, payment, and healthcare operations, as required by law and when specific patient written authorization is required for the use and disclosure of Super-Confidential PHI.

<b>DEFINITIONS</b>	
<b>TERM</b>	<b>DEFINITIONS</b>
<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.
<b>Business Associate</b>	<p>Generally, an entity or person who performs a function involving the use or disclosure of 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</p>



	Business Associates does not, however, include HIPAA Component workforce members.
<b>Code of Federal Regulations</b>	Also known as CFR is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.
<b>Component/Unit</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>	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>Designated Record Set</b>	<ol style="list-style-type: none"> <li>1. A group of records maintained by or for a covered entity that is: <ol style="list-style-type: none"> <li>a. The medical records and billing records about patients maintained by or for a covered health care provider;</li> <li>b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or</li> <li>c. Used, in whole or in part, by or for the covered entity to make decisions about patients.</li> </ol> </li> <li>2. For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.</li> </ol>
<b>Disclosure</b>	Means the release, transfer, provision of access to, or divulging in any other manner of PHI outside of the entity holding the information.



<b>DNA Deoxyribonucleic acid</b>	Deoxyribonucleic acid (abbreviated DNA) is the molecule that carries genetic information for the development and functioning of an organism. DNA is made of two linked strands that wind around each other to resemble a twisted ladder – a shape known as a double helix. Each strand has a backbone made of alternating sugar (deoxyribose) and phosphate groups. Attached to each sugar is one of four bases: adenine (A), cytosine (C), guanine (G) or thymine (T). The two strands are connected by chemical bonds between the bases: adenine bonds with thymine, and cytosine bonds with guanine. The sequence of the bases along DNA’s backbone encodes biological information, such as the instructions for making a protein or RNA molecule.
<b>Electronic Protected Health Information (ePHI)</b>	PHI in electronic form. See also: <u>PHI</u> .
<b>Florida International University</b>	Means the Institutionally Related Foundation that performs fundraising activities for Florida International University.
<b>Florida Statutes</b>	Also known as F.S. is a permanent collection of state laws organized by subject area into a code made up of titles, chapters, parts, and sections. The Florida Statutes are updated annually by laws that create, amend, transfer, or repeal statutory material.
<b>Health Care Component</b>	See “Component/Unit”
<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>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 all Americans and providing essential human services..
<b>HIPAA</b>	Means the Health Insurance Portability and Accountability Act of 1996.
<b>HITECH</b>	Means The Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, to promote the adoption and meaningful use of health information technology.



<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>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>Privacy Liaison/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</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. PHI, 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></ol>

	3. Employment records held by a covered entity in its role as an employer.
<b>Psychotherapy Notes</b>	<p>Notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of a conversation during a private, joint, group or family counselling session and that are separate from the rest of the patient’s medical record. Psychotherapy notes do not include any information about medication prescription and monitoring, counselling session start and stop times, the modalities and frequencies of treatment furnished, or results of clinical tests; nor do they include summaries of diagnosis, functional status, treatment plan, symptoms, prognosis and progress to date. Psychotherapy notes also do not include any information that is maintained in the patient’s medical record.</p> <p>Psychotherapy notes are the personal notes of the therapist that are typically not required or useful for treatment, payment, or healthcare operations purposes, other than by the mental health professional who created the notes.</p>
<b>Record</b>	Any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a Health Care Provider or Component/Unit
<b>Subpoena</b>	A written order of the court for a witness to appear at a particular time and place to testify and/or produce documents in the control of the witness (if a subpoena duces tecum)
<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.
  - Assist and provide guidance as necessary and appropriate to establish and maintain patient DRSs.
  - 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/Units:**
  - Each Component/Unit 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 ePHI.
  - Responsible for adhering to this policy and procedure and engaging the FIU Foundation with all fundraising activities.
  
- 3. Compliance Oversight: The Division of Information Technology**
  - Evaluates all federal and state healthcare laws, regulations, rules and ordinances (Rules) to ensure compliance with the security rules.
  - Develops and maintains all required University-wide Security Rule policies and procedures.
  - Develops and maintains HIPAA health care Security 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 Security Rules and associated FIU Policies and Procedures.
  - Partners with the Office of Compliance and Integrity Director of Compliance and Privacy for Health Affairs to ensure compliance with all federal and state healthcare privacy and security laws, regulations rules, and ordinances.



## RELATED RESOURCES

### References

- 45 CFR §164.501 (Definitions)
- 45 CFR §164.502 (Uses and Disclosures of Protected Health Information)
- 45 CFR §164.504 (Uses and Disclosures: Organizational Requirements)
- 45 CFR §164.506 (Uses and Disclosures to Carry Out TPO)
- 45 CFR §164.508 (Authorization Required)
- 45 CFR §164.512 (When an Opportunity to Agree or Object is Not Required)
- 45 CFR §164.514 (Other Requirements)
- 45 CFR §164.522 (Right to Request Privacy Protection)
- 45 CFR §164.530 (Administrative Requirements)
- Florida Statute §456.057 (Record Retention/Documentation)
- Florida Statute §348.29 and §348.30 (Sexually Transmissible Disease Records (STDs))
- Florida Statute §381.004(3)(e) (HIV/ AIDS Testing Records or Results)
- Florida Statute §392.65 (Tuberculosis)
- Florida Statute §394.4615, Florida Statute §490.0147, Florida Statute §90.503 (Psychiatric and Mental Health Records, Psychiatrist/ psychotherapist-Patient Privilege)
- Florida Statute §397.501 (Substance Use Disorder Records)
- Florida Statute §760.40 (Genetic Testing and Results)
- 42 U.S.C. §290dd-2 (Substance Use Disorder Records)
- 42 USC 2000ff (Genetic Information Non-discrimination Act of 2008)

### Related Policies

- FIU Policy and Procedure #1610.005 (Designated Health Care Components of FIU Community)
- FIU Policy and Procedure #1640.015 (Notice of Privacy Practices)
- FIU Policy and Procedure #1660.001 (Representatives)
- FIU Policy and Procedure #1660.015 (Business Associate Agreements)
- FIU Policy and Procedure #1660.025 (Minimum Necessary)
- FIU Policy and Procedure #16660.035 (Use and Disclosure of Patient Protected Health Information for Which an Authorization or Opportunity to Agree or Object is NOT Required)
- FIU Policy and Procedure #1660.040 (Verification)
- FIU Policy and Procedure #1660.045 (Right of Patients to Request Confidential Communications Regarding the Use and Disclosure of Their Protected Health Information)
- 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 #1660.080 (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), or the appropriate Component/Unit Privacy Liaison/Coordinator.

### HISTORY

**Initial Effective Date:** November 7, 2023

**Review Dates** (*review performed, no updates*): N/A

**Revision Dates** (*updates made to document*): November 7, 2023



**Use and Disclosure of Super-Confidential Protected Health Information  
#1660.150a**

<b>INITIAL EFFECTIVE DATE:</b>  November 7, 2023	<b>LAST REVISION DATE:</b>  November 7, 2023	<b>RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT</b>  Office of University Compliance and Integrity
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**PROCEDURE STATEMENT**

**Super-Confidential Protected Health Information**

FIU Health Insurance and Portability and Accountability Act (HIPAA) Hybrid Designated Healthcare Components (Components/Units) must designate a Privacy Liaison/Coordinator responsible for overseeing and ensuring the Component’s/Unit’s implementation and compliance with the HIPAA Privacy Rule, HITECH, the Omnibus Rules, FIU’s associated HIPAA Privacy Policies and Procedures, and any applicable federal and Florida state statutes and regulations governing the confidentiality, integrity and availability of Protected Health Information (PHI) and electronic PHI (ePHI), including, but not limited to obtaining specific written Authorization from the patient or the patient’s Representative to use and/or disclose the patient’s “Super-Confidential” PHI for purposes other than treatment, payment and health care operations, or as otherwise required and permitted by law. Privacy Liaisons/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)

When maintaining a patient’s Medical Records, Privacy Liaisons/Coordinators, designees, and Workforce members must clearly indicate the presence of Super-Confidential Medical Records/PHI to avoid impermissible uses and disclosures.

**I. Authorization (Super-Confidential Protected Health Information)**

- A. When a third-party intended recipient makes a request for the use and/or disclosure of a patient’s Super-Confidential PHI, the intended recipient is required to submit a specific and valid written authorization (Authorization) signed by the patient or the patient’s legally authorized representative (Representative). The Medical Records Manager, or designee must adhere to the procedures identified in FIU Policy and Procedure #1660.020 (Authorization for Uses and Disclosures of Patient Protected Health Information) regarding Authorizations (General), Verification, Compound Authorizations, Prohibition on Conditioning of Authorizations, Defective Authorizations, Incomplete Authorizations, Properly Completed Authorizations, Revocation of Authorization, and Documentation when using and/or disclosing Super-Confidential PHI. The

patient must identify via the Authorization the specific Super-Confidential PHI to be used and/or disclosed to a third-party.

Generally, a “Super-Confidential Authorization” is a General Authorization containing the required **NINE** elements of a General Authorization and which also identifies the specific “Super-Confidential” PHI that may be used and/or disclosed.

- B. A General Authorization is not sufficient to disclose Super-Confidential Medical Records/PHI.
- C. If a Medical Records Manager, or designee receives a General Authorization for the use and/or disclosure of a patient’s Medical Records/PHI, he/she **will not** disclose any Super-Confidential Medical Records/PHI, unless the Authorization identifies the specific Super-Confidential Medical Records/PHI that may be disclosed.

**NOTE:** A General Authorization and Super-Confidential Authorization **cannot** be used to disclose Psychotherapy Notes. (See below in Section D.4)

**NOTE:** Psychotherapy Notes **must** be kept separate and apart from the patient’s Medical Records.

1. Substance Misuse Disorder Patient Medical Records/PHI

- a. The Medical Records Manager, or designee **will not** disclose Substance Misuse Disorder Patient Medical Records/PHI except upon receipt of a specific and properly completed written Authorization signed by the patient or the patient’s Representative identifying the specific Substance Misuse Disorder Medical Records/PHI that may be disclosed. (See FIU Policy and Procedure #1660.001 (Representative))
- b. **IMPORTANT:** Whenever a disclosure is made concerning Substance Misuse Disorder Medical Records/PHI, the Component/Unit Privacy Liaison/Coordinator, or designee **must** ensure that the following written statement is provided to the recipient of the Medical Records/PHI at the time of disclosure:

*This information has been disclosed to you from records protected by Federal and State confidentiality rules (42 CFR Part 2). The Federal and State Rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2 and State law. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal and State rules restrict any use of the information to criminally investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65.*

- c. Medical Emergencies and Other Healthcare Providers

- i. The Medical Records Manager, or designee **may** disclose Substance Misuse Disorder Medical Records/PHI to medical personnel in a medical emergency and to other healthcare provider personnel necessary to provide emergency medical/treatment services to the patient.

d. **Disclosure to Obtain Payment for Services Rendered**

- i. The Medical Records Manager, or designee **will not** disclose Substance Misuse Disorder Patient Medical Records/PHI to receive payment for treatment services rendered except upon receipt of a specific and properly completed written Authorization from the patient or the patient's Representative identifying the specific Substance Misuse Disorder Medical Records/PHI that may be disclosed.

2. **Sexually Transmitted Disease (STD) Medical Records/PHI (Including HIV/AIDS)**

- a. The Medical Records Manager, or designee **will not** disclose Sexually Transmitted Disease (STD) Medical Records/PHI except upon receipt of a specific and properly completed written Authorization from the patient or the patient's Representative identifying the specific STD Medical Records/PHI and related information that may be disclosed. (See FIU Policy and Procedure #1660.001 (Representatives))
- b. **IMPORTANT:** Whenever a disclosure is made concerning STD Medical Records/PHI, the Medical Records Manager, or designee **must ensure** that the following written statement is provided to the recipient of the Medical Records/PHI at the time of disclosure:

Please be advised that the following information is being disclosed to you, but Florida law and/or Federal law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state and/or federal law. A General Authorization for the release/disclosure of medical or other information is NOT sufficient for this purpose.

- c. If an oral disclosure is made, Florida state statute requires that the oral disclosure must be followed by sending the written notice identified above in 2(b) to the recipient of the STD Super-Confidential PHI **within 10-days** of the disclosure.
- d. **Workers' Compensation/Workplace Injuries**
  - i. STD Medical Records/PHI **may not** to be disclosed in response to an alleged work injury **unless** the patient clearly identified that the STD is work related (Non-HIV/AIDS).

- ii. The Medical Records/PHI and reports relevant to the particular injury or illness specifically identified by the patient as work-related for which compensation is sought **must** be disclosed to the employer, the employer's workers' compensation insurance carrier, or the employer's attorney **without** the patient's written Authorization.
- iii. The disclosure **must** be limited to Medical Records/PHI of services provided in the treatment of a specifically identified workplace injury or illness.  
(See FIU Policy and Procedure #1660.025 (Minimum Necessary))

e. Medical Emergencies

- i. Florida state statute **does not** authorize disclosure of STD Medical Records/PHI **without** the consent of the individual in a medical emergency.

Human Immunodeficiency Virus (HIV) / Acquired immunodeficiency Syndrome (AIDS)

- a. The Medical Records Manager, or designee **will not** disclose HIV/AIDS Super-Confidential Medical Records/PHI except upon receipt of a specific and properly completed written Authorization from the patient or the patient's Representative identifying the specific HIV/AIDS Medical Records/PHI and related information that may be disclosed.

**NOTE:** While all patient Medical Records/PHI are confidential under federal law and Florida's Omnibus AIDS Act, HIV/AIDS test and results are classified as "Super-Confidential".  
(Florida Statute §381.004(2)(b)).

- b. **IMPORTANT:** Whenever a disclosure is made concerning any HIV test/treatment of a patient, the Medical Records Manager, or designee **must** ensure that the following written statement is provided to the recipient of the records at the time of disclosure:

*This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose.*  
(Florida Statute §381.004(2)(f))

- c. If an oral disclosure is made, the Florida state statute requires that the oral disclosure must be followed by sending the written notice identified immediately above in (b) to the recipient of the Super-Confidential PHI **within 10 days** of the disclosure.
- d. Florida state statute applies **only** to HIV test results which means the "laboratory report" as entered into a medical record. The protection applies only to the fact that an HIV test was

performed on an identifiable individual and any “HIV test result” (negative as well as positive). It **does not** include test results reported to a health care provider by a patient.

- e. The identity of the patient and the HIV test results may be disclosed to:
  - i. The individual tested and his/her Representative.
  - ii. Any person or entity designated in a legally effective written Authorization.
  - iii. Healthcare providers consulting between themselves or with healthcare facilities to determine diagnosis and treatment.
  
- f. **Workers’ Compensation/Workplace Injuries**
  - i. **IMPORTANT:** An administrative law judge of compensation claims of the Division of Workers’ Compensation **may** authorize disclosure of HIV test results.
  - ii. The disclosure **must** be limited to Medical Records/PHI of services provided in the treatment of a specifically identified workplace injury or illness.  
(See FIU Policy and Procedure #1660.025 (Minimum Necessary))

3. **Psychiatric and Psychological Medical Records/PHI**

- a. Upon a patient’s or Representative’s specific Written Authorization, psychiatric and psychological Medical Records/PHI of a mental health provider licensed under Chapter 490 or 491 of the Florida Statutes **must** be disclosed.
- b. **IMPORTANT:** Whenever a disclosure is made concerning psychiatric and psychological Medical Records/PHI, the Medical Records Manager, or designee **must** ensure that the following written statement is provided to the recipient of the Medical Records/PHI at the time of disclosure:

Please be advised that the following information is being disclosed to you, but Florida law and/or Federal law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state and/or federal law. A General Authorization for the release/disclosure of medical or other information is NOT sufficient for this purpose.

- c. **NOTE:** If a specific Written Authorization for complete copies of the Medical Record/PHI is made for the use of a subsequent licensed psychiatrist, then complete Medical Records/PHI **must** be provided (disclosed).

4. **Psychotherapeutic Notes**

- a. Upon a patient's or Representative's specific Written Authorization, Psychotherapy Notes of a mental health provider licensed under Chapter 490 or 491 of the Florida Statutes **may** be disclosed but are **not** required to be disclosed.
- b. A Written Authorization for the use or disclosure of Psychotherapy Notes **may only** be combined with another Authorization for a use or disclosure of Psychotherapy Notes. The Written Authorization cannot be combined with an Authorization for the use or disclosure of any other Medical Records/PHI, including other Super-Confidential Medical Records/PHI. (See Authorization for Psychotherapy Notes attached)
- c. Unlike other Protected Health Information (PHI), including Super-Confidential PHI, Healthcare Components/Units may deny a patient and their Representative access to Psychotherapy Notes. Psychotherapy Notes were specifically excluded from the Right of Access. (See FIU Policy and Procedure #16660.050 (Patient Access to Protected Health Information))
- d. **IMPORTANT:** Whenever a disclosure is made concerning psychiatric and psychological Medical Records/PHI or Psychotherapy Notes, the Medical Records Manager, or designee **must** ensure that the following written statement is provided to the recipient of the Medical Records/PHI at the time of disclosure:

Please be advised that the following information is being disclosed to you, but Florida law and/or Federal law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state and/or federal law. A General Authorization for the release/disclosure of medical or other information is NOT sufficient for this purpose.

5. **Genetic Information**

- a. The results of DNA analysis are confidential and **require** the specific Written Authorization of the person in order to disclose the information.
- b. **NOTE:** The results of DNA analysis are the "*exclusive property*" of the person tested.
- c. **IMPORTANT:** Whenever a disclosure is made concerning genetic information, the Medical Records Manager, or designee **must** ensure that the following written statement is provided to the recipient of the Medical Records/PHI at the time of disclosure:

Please be advised that the following information is being disclosed to you, but Florida law and/or Federal law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state and/or federal law.



A General Authorization for the release/disclosure of medical or other information is NOT sufficient for this purpose.

6. Tuberculosis

- a. Generally, such Medical Records/PHI **may not** be released without the specific and properly completed written Authorization of the patient or Representative, absent one of the legal or health oversight exemptions.
- b. **IMPORTANT:** Whenever a disclosure is made concerning Tuberculosis Medical Records/PHI, the Medical Records Manager, or designee **must** ensure that the following written statement is provided to the recipient of the Medical Records/PHI at the time of disclosure:

Please be advised that the following information is being disclosed to you, but Florida law and/or Federal law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state and/or federal law. A General Authorization for the release/disclosure of medical or other information is NOT sufficient for this purpose.

- c. **NOTE:** Such Medical Records/PHI **may not** be disclosed without patient consent in a medical emergency.

II. Timeliness of response to request:

1. Florida

- 1. The requested Medical Records/PHI **must** be disclosed in a “**timely manner.**”
- 2. Medical Malpractice requests must be disclosed in not greater than **10 days** following receipt of a proper request.

**NOTE:** If the request identifies a potential medical malpractice claim against an FIU facility, one of the health care providers, or one or more Workforce members, the records **must** be provided to the requestor within not greater than **10 days** following receipt of a proper request. All such requests **MUST** be forwarded to the FIU Office of General Counsel for handling and response prior to the disclosure.

2. The HIPAA Privacy Rule

1. Components/Units must act on a request for disclosure within not greater than **30 days** from receipt of the written Authorization. If needed, a one-time extension of not greater than **30 days** is permitted following written notice of the extension to the patient or the Representative.

3. The 21<sup>st</sup> Century Cures Act - Information Blocking Rules

1. The Information Blocking Rules require contemporaneous uploading of the requested Super-Confidential PHI/ePHI within the Electronic Medical Records Portal following receipt of a proper completed request for access and/or disclosure by an authorized Actor as defined by the Rules, if the Actor make a request for the disclosure through the Portal.

III. Subpoenas, Court Orders, Search Warrants and Compelled Testimony

A. Subpoena

1. A subpoena signed by an attorney **is not** effective to disclose Super-Confidential Records.
2. **IMPORTANT:** With limited exception, subpoenas **are not** sufficient under Florida law for the release of HIV test results.
3. If an FIU Healthcare Component/Unit receives a subpoena from the Florida Agency for Health Care Administration or the Florida Department of Health for the purpose of investigating an FIU facility or one or more of the FIU Healthcare providers or Workforce members, the Medical Records Manager, or designee **must** forward the subpoena to the Office of General Counsel and the Director of Compliance and Privacy for Health Affairs with the Office of Compliance and Integrity, for review and to direct and oversee the disclosure of the Super-Confidential Medical Records/PHI in accordance with applicable laws and regulations.

B. Court Orders

1. The Medical Records Manager, or designee **may** disclose Super-Confidential Medical Records/PHI in response to a Court Order.
2. **NOTE:** The Medical Records Manager, or designee **may not** disclose psychiatric and psychological records in response to a federal Court Order, including most records created by social workers.
3. **NOTE:** There must be a Court Order to release HIV test results for Workers' Compensation claims.  
(Florida Statutes §381.004(2)(e) and §456.057(7), and 45 C.F.R. §164.512(e)(1)(ii)(A))

C. Compelled Testimony

1. Workforce members **may** disclose Super-Confidential Medical Records/PHI when a court of proper jurisdiction compels testimony at trial.

D. Search Warrants

1. The Medical Records Manager, or designee **must** provide patient Medical Records/PHI **without** patient written Authorization if requested via a properly executed Search Warrant.
2. **IMPORTANT:** All Search Warrants **must** be directed to the Office of General Counsel who will determine how to respond to such requests in accordance with applicable laws and regulations.

IV. Re-Disclosure

- A. Florida Statute prohibits the re-disclosure of medical information **without** the “expressed written consent” (written Authorization) of the patient or the patient’s Representative.  
(Florida Statute §456.057(12))

V. Disclosures

- A. The Medical Records Manager, or designee **must** document all disclosures consistent with the procedures identified in FIU Policy and Procedure #1660.020 (Authorization for Uses and Disclosures of Patient Protected Health Information)

VI. Record Retention

- A. The Medical Records Manager, or designee **must** maintain all documentation and patient Written Authorizations for seven (7) years from the date of its receipt 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))

VII. Forms

1. Authorization for Use/Disclosure of Medical Information
2. Authorization for Use/Disclosure of Psych Notes