



Fees for Patient Access and Third-Party Request for Disclosure of Protected Health Information #1660.160

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

POLICY STATEMENT

The Florida International University (FIU) Health Insurance Portability and Accountability Act (HIPAA) Hybrid Designated Healthcare Components (Components) must provide their patients and their legally authorized representatives (hereinafter “patient(s)”) the right to inspect and obtain a copy (hereinafter “access”) of the patient’s Protected Health Information (PHI) in medical and billing records (hereinafter “Designated Record Set”) about the patient which are maintained by the Healthcare Component, or a Business Associate on behalf of the Healthcare Component:

- For as long as the PHI is maintained in the Designated Record Set,
- Whether the PHI is maintained in paper or electronic systems onsite, remotely, or is archived, or where the PHI originated, and
- In the requested Form, Format, and Manner, if it is readily producible in such Form, Format, and Manner.

Healthcare Components should consider providing patients who request access to their information with copies of their PHI free of charge. Providing patients with access to their health information is a necessary component of delivering and paying for health care. Accordingly, not charging patients a fee for copies of their PHI is particularly vital in cases where the financial situation of a patient requesting access would make it difficult or impossible for the patient to afford the fee.

As a university-wide policy and procedure, this policy and procedure takes precedence over any Healthcare Component-specific policies, procedures, or protocols that conflicts with this policy and procedure, unless prior written approval is obtained from the University Office of Compliance and Integrity. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)



Healthcare 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 Healthcare Component Privacy Coordinator/Liaison, or designee is 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 administrative and disciplinary action. (FIU Policy and Procedure #1660.085) (Sanctions)

Each Component must designate a HIPAA Privacy Coordinator/Liaison and a HIPAA Security Coordinator/Liaison. (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, federal and Florida state statutes and regulations. (FIU Policy and Procedure #1660.080) (Policies and Procedures, Changes to Policies and Procedures, and Documentation)

SCOPE

The policy applies to the FIU's Healthcare Components 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 Associates Agreements.

REASON FOR POLICY

To identify the approved manner and fees that may be charged to patients and their representatives to obtain copies of the patient's PHI (Access) and third-party requests for the disclosure of the patient's PHI.



DEFINITIONS	
TERM	DEFINITIONS
Access	Means the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any <u>system</u> resource.
Administrative Officer	Means the Component Workforce member responsible for financial management, human resources administration, management of facilities and equipment, and other administrative functions required to support the teaching and research missions of the FIU HIPAA Hybrid Designated Health Care Component. The Administrative Officer is the senior administrative staff position in the department, Division or Office and provides continuity as academic leadership changes.
Business Associate	<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>NOTE: A business associate relationship exists when an patient or entity, acting on behalf of an FIU HIPAA Component(s), assists in the performance of a function or activity involving the creation, use, disclosure, or access of PHI. This includes, but not limited to, claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management or repricing.</p> <p>NOTE: A Business Associate may include any patient 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>



Business Associate Agreement	Means a contract or other written arrangement with a business associate which must describe the permitted and required uses of protected health information by the business associate; Provide that the business associate will not use or further disclose the protected health information other than as permitted or required by the contract or as required by law; and Require the business associate to use appropriate safeguards to prevent a use or disclosure of the protected health information other than as provided for by the contract.
Center for Children and Families (CCF)	A Healthcare Component of FIU’s HIPAA Hybrid Designation.
Code of Federal Regulations	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.
Component	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.
Covered Entity	An entity that is subject to HIPAA. <ul style="list-style-type: none"> 1. a health plan; 2. a health care clearinghouse; and/or 3. a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter. <p>Note: FIU, the legal entity, is the Covered Entity for HIPAA compliance purposes. FIU is a Hybrid Entity, only FIU designated Components, to the extent it performs covered functions, are subject to HIPAA requirements.</p>
Disclosure	Means the release, transfer, provision of access to, or divulging in any other manner of protected health information outside of the entity holding the information.

<p>Designated Record Set</p>	<p>1. A group of records maintained by or for a covered entity that is:</p> <ul style="list-style-type: none"> a. The medical records and billing records about patients maintained by or for a covered health care provider; b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or c. Used, in whole or in part, by or for the covered entity to make decisions about patients. <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>
<p>Electronic Media</p>	<p>Means:</p> <ul style="list-style-type: none"> 1. Electronic storage material on which data is or may be recorded electronically, including, for example, devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; 2. Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the Internet, extranet or intranet, leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission.
<p>Electronic Protected Health Information (ePHI)</p>	<p>PHI in electronic form. See also <u>PHI</u>.</p>
<p>Florida Statutes</p>	<p>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. ... Laws of Florida—a compilation of all the laws, resolutions, and memorials passed during a legislative session.</p>



Form and Format	Refer to how the PHI is conveyed to the patient (e.g., on paper or electronically, type of file, etc.)
Health Care	Means the care, services, or supplies related to the health of a patient, including: <ol style="list-style-type: none">1. preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of a patient or that affects the structure or function of the body; and2. sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.
Healthcare Component	See “Component”
Health Care Provider	Means a provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.
U.S. Department of Health and Human Services	Also known as HHS is the principle federal agency with the core mission to enhance the health and well-being of all Americans, by providing for effective health and human services and by fostering sound, sustained advances in the science underlying medicine, public health, and social services.
HIPAA	Means the Health Insurance Portability and Accountability Act of 1996.
Hybrid Covered Entity	Means a single legal entity that performs both covered and non-covered functions. The entity has a defined health care component that engages in HIPAA electronic transactions
Patient	The person who is the subject of PHI.
Privacy Coordinator/Liaison	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.
Protected Health Information (PHI)	Means any patiently 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 patient or the past, present, or future payment for the provision of health care to an patient. Protected Health Information however specifically excludes: <ol style="list-style-type: none"> 1. Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g (“FERPA”); 2. Records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and 3. Employment records held by a covered entity in its role as an employer.
Privacy Rule	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.
Representative	Means someone with the legal authority to act on behalf of an incompetent adult client, a minor client or a deceased client or the client’s estate in making health care decisions or in exercising the client’s rights related to the client’s protected health information.
Secretary	Means the Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.
Treatment, Payment, and Healthcare Operations	(TPO)



Treatment	Means the provision, coordination, or management of health care and related services among health care providers or by a healthcare provider with a third party, or consultative services among providers regarding a patient.
Use	With respect to patient identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
Workforce	Means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity (FIU HIPAA Component) or business associate, is under the direct control of such covered entity or business associate, whether or not they are paid by the covered entity or business associate.

ROLES AND RESPONSIBILITIES

1. **Compliance Oversight:** The Office of University Compliance and Integrity (University Compliance)
 - Evaluates all federal and state healthcare privacy laws, regulations, rules and ordinances (Rules) to ensure FIU’s compliance with the Rules.
 - Develops and maintains all required University-wide health care Privacy Rule policies, procedures and associated forms.
 - Develops and maintains HIPAA health care Privacy Rule training modules and ensures appropriate Workforce members complete the required training.
 - Performs audits and assessments of the Components to ensure their compliance with the Privacy Rules and associated FIU Policies and Procedures.
 - Partners with the Division of Information Technology HIPAA Security Officer to ensure compliance with all federal and state healthcare privacy and security laws, regulations rules, and ordinances.

2. **HIPAA Components:**
 - Each FIU HIPAA Hybrid Designated Component must designate and maintain a Privacy Rule Coordinator/Liaison who will work closely with and under the direction of the Director of Compliance and Privacy for Health Affairs to overseeing and ensure 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 receiving and processing requests by patients for access and third-parties request for disclosure of PHI and identifying and collecting fees.

RELATED RESOURCES

References

- 45 CFR §160.306
- 45 CFR §164.502
- 45 CFR §164.514
- 45 CFR §164.522
- 45 CFR §164.524
- 45 CFR §164.530
- F.S. §456.057
- F.S. §95.11
- F.S. §394.4615

Related Policies

- FIU Policy # 1610.005 (Designated Health Care Components of FIU Community)
- FIU Policy and Procedure #1660.015 (Business Associate Agreements)
- FIU Policy and Procedure #1660.020 (Authorization for Uses and Disclosures of Patient Protected Health Information)
- FIU Policy and Procedure #1660.050 (Patient Access to Protected Health Information)
- FIU Policy and Procedure #1660.040 (Verification)
- 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, or the appropriate Component Privacy Coordinator/Liaison.

HISTORY

Initial Effective Date: November 7, 2023

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

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



Fees for Patient Access and Third-Party Request for Disclosure of Protected Health Information #1660.160a

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PROCEDURE

PROCEDURE STATEMENT

I. Requests to Access

Each Healthcare Component must designate a Privacy Coordinator/Liaison responsible for overseeing and ensuring the Component’s implementation and compliance with the HIPAA Privacy Rule, Florida state statutes, 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 PHI and electronic PHI (ePHI), including, but not limited to receiving and processing requests from patients and or their legally authorized representatives (hereinafter “patient”) for access to the patient’s PHI contained within the patient’s Designated Record Set, receiving and processing requests from third-parties for the disclosure of patient PHI, and identifying and collecting associated fees. Privacy Coordinators/Liaisons 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. Form, Format and Manner

1. The Medical Records Manager, or designee will provide patients with a copy of their PHI in the **form, format and manner** requested, if readily producible in that form, format, and manner, or as otherwise agreed to by the patients.

B. Limited Reasonable, Cost-Based Fees

1. The Medical Records Manager, or designee may charge patients a reasonable cost-based fee **limited** to the cost of certain:

- a. **Labor:** The Medical Records Manager, or designee may charge for labor to copy the PHI requested by the patient, whether in paper or electronic form. Labor for copying **includes only** labor for creating and delivering the paper or electronic copy in the form, format, and manner requested or agreed upon by the patient, once the PHI that is responsive to the request has been identified, retrieved, or collected, compiled and/or collated, and is ready to be copied.

For example, labor for copying may include labor associated with the following, as necessary to copy and deliver the PHI in the form, format and manner requested or agreed to by the patient:

- Photocopying paper PHI.
- Scanning paper PHI into an electronic format.
- Converting electronic information in one format to the format requested by or agreed to by the patient.
- Transferring (e.g., uploading, downloading, attaching, burning) electronic PHI from the Healthcare Component's system to a web-based portal (where the PHI is not already maintained in or accessible through the portal), portable media, e-mail, app, personal health record, or other manner of delivery of the PHI.
- Creating and executing a mailing or e-mail with the responsive PHI.

Labor to prepare an explanation or summary of the PHI, if the patient **in advance** both chooses to receive an explanation or summary **and** agrees to the fee that may be charged.

- b. In contrast, labor for copying **does not** include labor costs associated with:
- Reviewing the request for access.
 - Searching for, retrieving, and otherwise preparing the responsive information for copying. This includes labor to locate the appropriate Designated Record Sets about the patient, to review the records to identify the PHI that is responsive to the request and to ensure the information relates to the correct patient, and to segregate, collect, compile, and otherwise prepare the responsive information for copying.

NOTE: It is important to ensure that the fees charged reflect only what the federal Department of Health and Human Services (HHS)

considers "copying" for purposes of complying with the HIPAA Access Rule and do not impede patients' ability to receive a copy of their PHI.

- c. **Supplies:** Supplies for creating the paper copy (e.g., paper, toner), envelopes when the patient requests that the PHI/ePHI be mailed to them, or electronic media (e.g., CD or USB drive) if the patient requests that the electronic copy be provided on portable media.

NOTE: Healthcare Components may **not** require a patient to purchase portable media. Patients have the right to have their PHI e-mailed or mailed to them upon request.

- d. **Postage:** Postage, when the patient requests that the copy, electronic media, or the summary or explanation, be mailed.

NOTE: The Healthcare Component and its Workforce members **will not** include the costs associated with updates to or maintenance of systems and data, capital for data storage and maintenance, labor associated with ensuring compliance with HIPAA (and other applicable law) in fulfilling the access request (e.g., verification, ensuring only information about the correct patient is included, etc.) and other costs not included above, **even if authorized by Florida state statutes**, for purposes of calculating the fees that can be charged to patients.

C. Calculating the Reasonable Cost-Based Fees

- 1. The Healthcare Components may charge a *reasonable, cost-based fee* for patients (or their personal representatives) to receive a copy of the patients' PHI. The Healthcare Components may charge the **actual cost**, the **average cost**, or a **flat fee** for electronic copies of PHI maintained electronically.

- a. Actual costs

- i. The Healthcare Components may calculate **actual** labor, costs to fulfill the request, as long as the labor included is **only** for copying (and/or creating a summary or explanation if the patient chooses to receive a summary or explanation) and the labor rates used are reasonable for such activity.
- ii. The Healthcare Components may add to the **actual** labor costs any applicable supplies (e.g., paper, or CD or USB drive) and postage costs.

Healthcare Components that charge patients **actual** costs based on each patient **access** request still must be prepared to inform patients **in advance** of the approximate fee that may be charged for providing the patient with a copy of his/her PHI.

For example, an actual labor cost calculation would be to time how long it takes for the Medical Records Manager, or designee (or Business Associate) to make and send a copy of the requested PHI in the **form and format and manner** requested or agreed to by the patient and multiply the time by the reasonable hourly rate of the person copying and sending the PHI.

NOTE: What is reasonable for purposes of an hourly rate will vary depending on the level of skill needed to create and transmit the copy in the **manner** requested or agreed to by the patient (e.g., administrative level labor to make and mail a paper copy *versus* more technical skill needed to convert and transmit the PHI in a particular electronic format).

b. Average costs

- i. In lieu of calculating labor costs for each request, the Healthcare Components may develop a schedule of costs for labor based on average labor costs to fulfill standard types of access requests, as long as the types of labor costs included are the ones which the HIPAA Privacy Rule permits to be included in a fee (e.g., labor costs for copying **but not** for search and retrieval) and are reasonable. Healthcare Components may add to that amount any applicable supply costs (e.g., paper, envelopes, CD or USB drive, and postage).
- ii. The Healthcare Components may calculate the standard rate and charged as a per page fee **only** in cases where the PHI requested is maintained in paper form and the patient requests a **paper copy** of the PHI or asks that the **paper PHI** be scanned into an electronic format.

NOTE: Per page fees are **not** permitted for paper or electronic copies of PHI **maintained electronically (ePHI)**

NOTE: The HHS Office of Civil Rights (OCR) is aware that per page fees in many cases have become a proxy for fees charged for all types of access requests – whether electronic or paper – and that many states with authorized fee structures have not updated their laws to account for

efficiencies that exist when generating copies of information maintained electronically. This practice has resulted in fees being charged to patients for copies of their PHI that do not appropriately reflect the permitted labor costs associated with generating copies from information maintained in electronic form. Therefore, OCR does **not** consider per page fees for copies of PHI maintained electronically to be reasonable.

c. **Flat Fee for Electronic Copies of PHI Maintained Electronically (ePHI)**

- i. The Healthcare Components may charge patients a flat fee for all requests for electronic copies of PHI **maintained electronically (ePHI)**, provided the fee does not exceed \$6.50, inclusive of all labor, supplies, and any applicable postage. Charging a flat fee not to exceed \$6.50 is therefore an option for the Healthcare Components that do not want to go through the process of calculating **actual or average allowable costs** for requests for electronic copies of PHI maintained electronically (ePHI).

NOTE: In some cases where a Healthcare Component chooses generally to use the average cost method, or chooses a flat fee, as described above, for electronic copies of PHI maintained electronically, the Healthcare Component may receive an unusual or uncommon type of request that it had not considered in setting up its fee structure. In these cases, the Healthcare Component may wish to calculate actual costs to provide the requested copy, and it may do so as-long-as the costs are reasonable and only of the type permitted by the HIPAA Privacy Rule.

D. **Informing Patients in Advance of any Reasonable Cost-Based Fee that may be Charged**

1. When a patient requests access to his/her PHI, the Medical Records Manager, or designee must inform the patient **in advance** of the approximate reasonable cost-based fee that may be charged.
2. Since the fees the Healthcare Components are permitted to charge will vary based on the **form, format and manner** of access requested or agreed to by the patient, the Medical Records Manager, or designee must, **at the time such details are being negotiated or arranged**, inform the patient of any associated reasonable cost-based fee that may impact the **form, format and manner** in which the patient requests or agrees to receive a copy of his/her PHI.

NOTE: The failure to provide advance notice is an unreasonable measure that may serve as a barrier to the right of access.

3. In addition, if a patient requests, the Medical Records Manager, or designee should provide the patient with a breakdown of the charges for labor, supplies, and postage, if applicable, that make up the total fee charged.

NOTE: This information would likely be requested in any action taken by the Health and Human Services, Office of Civil Rights in enforcing the patient's right of access, so the Medical Records Manager, or designee will benefit from having this information readily available.

E. Business Associates

1. The Medical Records Manager, or designee **cannot** charge fees for administrative and other costs associated with outsourcing the function of responding to patient requests for access.

F. Patient Request to Visually Access (Inspect) his/her PHI

1. The Healthcare Components **cannot and will not** charge patients a fee for exercising their right of access to their PHI for merely providing the patient the opportunity to view and inspect the PHI.
2. Healthcare Components will allow patients to inspect their PHI held in a Designated Record Set (free of charge), either in addition to obtaining copies or in lieu thereof. Accordingly, the Medical Records Manager, or designee, **must** arrange with the patient for a convenient time and place for the patient to inspect his/her PHI.
3. The Healthcare Components should have in place reasonable procedures to enable patients to inspect their PHI, and requests for inspection should trigger minimal additional effort by the Medical Records Manager, or designee, particularly where the PHI requested is of the type easily accessed onsite by the Medical Records Manager, designee, and Workforce members during the ordinary course of business.

For example, the Medical Records Manager, or designee could use the capabilities of Certified EHR Technology (CEHRT) to enable patients to inspect their PHI, if the patients agree to the use of this functionality.

4. Further, the Medical Records Manager, or designee **may not** charge a patient, or patient Representative who, while inspecting the patient's PHI, takes notes, uses a smart phone or other device to take pictures of the PHI, or uses other personal resources to capture the information. If the patient is making the copies of PHI using his/her own resources, the Medical Records Manager, or designee **may not** charge a fee for those copies, as the copying is being done by the patient or patient Representative and not the Medical Records Manager, or designee.
5. The Medical Records Manager, or designee may establish reasonable policies and safeguards regarding a patient's use of her own camera or other device for copying PHI to assure that equipment or technology used by the patient is not disruptive to the Healthcare Component's operations and is used in a way that enables the patient to copy or otherwise memorialize only the records (PHI) to which he/she is entitled.

NOTE: The Medical Records Manager, or designee **are not** required to allow the patient to connect a personal device to the covered Healthcare Component's systems.

G. Limits on the Patient's Right to Direct the Healthcare Component to Disclosed (i.e., send) the Patient's PHI to a Third-Party under the Patient Access Rules.

1. The Healthcare Component Medical Records Manager, or designee **are** required to disclose (i.e., send) a copy of the patient's PHI/ePHI to a third-party at the request for the patient under the Right of Access Rules.
2. Although the federal Department of Health and Human Services and the Office of Civil Rights extended the patient Right of Access "when an individual (or their representative) directs a covered entity (FIU and the Healthcare Component(s)) to send the individual's PHI/ePHI to a third party" and limited charges to a reasonable or flat fee, on January 23, 2020, the Court in the case of Ciox Health, LLC v. Azar, et. al., vacated the "third-party directive" within the individual Right of Access and the associated fee limitations for ePHI. Accordingly, the fee limitations **do not** apply in this situation.

H. Right of Access Request versus a Third-Party Requests via a Written Authorization

1. The Health Care Components (or a Business Associate) may not circumvent the Right of Access fee limitations by treating patient requests for access like other

HIPAA disclosures – such as by having a patient complete and submit a written HIPAA Authorization when the patient request access to his/her PHI.

NOTE: A written HIPAA Authorization requests more information than is necessary or that may not be relevant for patients to exercise their access rights. Therefore, requiring the patient to submit a written HIPAA Authorization may create impermissible obstacles to the exercise of the patient’s access right.

2. Where it is unclear to a Healthcare Component Medical Records Manager, or designee, based on the form of a request sent by a third party, whether the request is an access request initiated by the patient or merely a written HIPAA Authorization signed by the patient to disclose PHI to the third party, the Healthcare Component Medical Records Manager, or designee may clarify with the patient whether the request was at the direction of the patient or a request for disclosure from the third party.
 3. When the third party initiates a request for patient PHI on its own behalf, with a written Authorization, signed by the patient, the access fee limitations and timeframe for disclosure **do not** apply.
- I. **Withholding Patient Access to Protected Health Information Because the Allowable Access Fee Was Used Instead Pay an Outstanding Bill for Health Care Services Provided**
1. Healthcare Components **may not** withhold or deny a patient access to his/her PHI on the grounds that the patient has not paid the bill for health care services provided to the patient.
 2. Healthcare Components **may not** withhold or deny the patient access to his/her PHI on the grounds that the Healthcare Component used the patient's payment of the fee for a copy of his/her PHI to offset or pay the patient's outstanding bill for health care services rendered.

II. **Website(s)**

- A. The Healthcare Components should post on their website(s) or otherwise make available to patients an approximate fee schedule for regular types of access requests.

III. **Record/Documentation Retention**



If a communication, action, activity, or designation is required to be documented in writing, the document or record owner (e.g., the Office of Compliance and Integrity or the Component) 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)

IV. Forms

Patient Right of Access to PHI form