HIPAA Policy – Use and Disclosure of Protected Health Information
January 1, 2016

SCOPE
This policy applies to Florida Atlantic University’s Covered Components and those working on behalf of the Covered Components (collectively “FAU”) for purposes of complying with the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

POLICY STATEMENT
Individually Identifiable Health Information created, received, maintained, or transmitted by FAU in any format may only be used and disclosed in accordance with federal and state laws. FAU Covered Health Care Components will obtain an Authorization from the individual or the individual’s Legally Authorized Representative to use and disclose the individual’s Protected Health Information (“PHI”) for purposes not related to treatment, health care operations or as otherwise required by law.

REASON FOR THE POLICY
To provide direction on when a valid Authorization for release of information is required from a patient and when uses and disclosures may be made without an Authorization.

DEFINITIONS- Refer to Glossary and Terms

PERMITTED USE AND DISCLOSURE OF PHI

1. **General Rule Where No Authorization Required.** FAU may share PHI without a patient Authorization for the purpose of treating the patient.1 In addition, FAU’s Chief Compliance Officer serves as an Authorization from the patient to use PHI for purposes related to obtaining payment, and for its health care operations (as permitted by HIPAA).

   a. **Responses to Subpoenas, Court Orders, and Warrants.** With the exception of Super-Confidential Information, general patient medical information records may be disclosed under the authority of a subpoena, provided the patient or his/her Legally Authorized Representative has been notified of the request and has had an opportunity to object and has not. This opportunity to object may be established by a copy of the notice to issue the subpoena, a signed representation of the requesting attorney that the opportunity to object has been offered.

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1 F.S. §456.057(7)(a); 45 C.F.R. §164.506(c)(2).
and no objection has been received.² Information may also be disclosed as part of other legal process such as compelled testimony at trial or a court order. Florida case law also indicates that health care providers must provide patient records without patient Authorization if requested via a search warrant.³ All such record requests shall be directed to the Chief Compliance Officer, who shall determine how to respond to such requests in accordance with applicable laws and regulations.

b. **Workers’ Compensation Medical Records.** PHI regarding medical services provided for an injury or illness specifically identified by the patient as work-related (with the exception of HIV testing and results) is disclosable to the employer, employer’s workers’ compensation insurance carrier, or the employer’s attorney without the patient’s written Authorization.⁴ This disclosure is limited to records of services provided in the treatment of a specifically identified workplace injury or illness. Substance abuse treatment, family planning, STD, or other medical records are not to be disclosed under this provision unless the patient clearly identified these as work related.

c. **During Patient Treatment.** PHI may be disclosed (usually verbally) to the patient (or Legally Authorized Representative) during the course of the patient’s medical treatment. Care should be taken not to disclose PHI to friends or family members who may be present during the patient’s treatment without the patient’s Authorization. Before disclosing PHI, medical providers should ask the patient if it is o.k. to discuss treatment with those present, or whether the patient would like the family members/friends to be excused so the provider can discuss the patient’s treatment privately with the patient. If the patient gives verbal consent for the medical provider to discuss treatment with family members, it is a good practice to document this permission in the patient’s chart, including the names of the family members present.

d. **Mandatory Reporting of Abuse/Neglect.** State law mandates reporting of suspected abuse or neglect of children and vulnerable adults.⁵ Authorization is not required prior to making such reports.

e. **Disclosures Otherwise Required by Law.** State law has various other provisions mandating reporting such as mandatory reporting of certain communicable diseases and vital statistics reporting. Patient Authorization is not required where state law requires such reporting and does not indicate that patient Authorization is required.

f. **Disclosures to Health Oversight Agencies.** An Authorization is not required to disclose information to a health oversight agency (e.g. Department of Health) when such request is properly made in accordance with state or federal law.

² F.S. §456.057(7); 45 C.F.R. §164.512(e)(1)(ii)(A).
⁴ F.S. §440.13(4)(c).
g. **Serious Public Harm.** Patient Authorization is not required to release communications between a psychologist or psychotherapist and his/her patient where there is a clear and immediate probability of physical harm to the patient, or others, and the psychologist/psychotherapist communicates the information only to the potential victim, family member, law enforcement or other appropriate authority.\(^6\)

h. **Other.** It is impossible to list all possible exceptions to which patient Authorization is required before FAU releases PHI. All situations involving unusual circumstances should be directed to the Chief Compliance Officer for evaluation of whether PHI should be released and under what circumstances.

2. **Written Authorization Required.** Information will be disclosed to a patient or his/her Legally Authorized Representative upon request. Information will be disclosed to third parties upon a properly executed Authorization. If the Authorization involves the release of Super-Confidential Information (i.e. HIV test results, sexually transmitted diseases, psychiatric, psychological or psychotherapeutic records, substance abuse treatment), the Authorization must specifically permit disclosure of such Super-Confidential Information.

a. **HIV Test Results.** Except when the disclosure is to another healthcare provider for treatment or diagnosis, HIV testing and results require a specific Authorization stating the HIV test result may be disclosed to a specific person or organization.\(^7\) When HIV test results are disclosed pursuant to a proper, specific Authorization, the results must be accompanied by the following statement, “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.”

b. **STD Test Results.** Individual patient sexually transmitted disease (STD) medical records may be disclosed with an Authorization specifically identifying that information related to STDs can be released. If a minor consents to his/her own testing and treatment for STDs, then such results can only be released upon the minor’s Authorization.\(^8\)

c. **Psychiatric, Psychological, or Psychotherapeutic Notes.** Upon a patient’s (or Legally Authorized Representative’s) specific, written Authorization, psychiatric, psychological, or psychotherapeutic notes of a mental health provider licensed under Chapter 490 or 491, Florida Statutes may be supplied in full, or a report of examination and treatment in lieu of copies of records may be provided at the direction of the psychiatrist, psychologist, or psychotherapist. If

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\(^6\) F.S. §§490.0147, 491.0147.

\(^7\) F.S. §381.004.

\(^8\) F.S. §456.057. Note: §384.29, Florida Statutes applies to the Department of Health and its authorized representatives. This policy assumes that FAU is not acting as an authorized representative of the Department of Health.
a written request for complete copies of the record is made for the use of a subsequent licensed
psychiatrist, then complete records shall be provided.\(^9\) An Authorization for the release of such
notes or records shall be contained in a separate Authorization and not combined with an
Authorization for other services.

d. **Substance Abuse Services Records.** Substance abuse service provider records
shall not be disclosed except upon a specific, written Authorization from the patient.

e. **Minors.**

i. When a parent or guardian consents for medical services on a minor’s
behalf, the patient’s medical information may be disclosed to the parent/guardian.

ii. When a minor is authorized and consents for medical services on his/her
own behalf, then only the minor may authorize disclosure of the medical information.\(^10\) Under
certain circumstances, minors can legally consent to health care services for sexually transmitted
diseases, family planning, mental health and substance abuse treatment.\(^11\)

f. **Deceased Patient’s Records.** The PHI of a deceased individual is confidential.
The authorized representative for disclosure of a deceased’s medical record is the next of kin or
personal representative. \(^\)FAU requires proof that a person is authorized as the next of kin or
personal representative of the patient’s estate before releasing medical records.

g. **Marketing/Solicitation/Fundraising.** An Authorization is required for any use
and disclosure of PHI for marketing, fundraising, solicitation, or in the event PHI will be sold to a
third party.\(^12\) If FAU will receive any remuneration from the sale of PHI, the authorization form
must state this.

h. **Research.** This policy does not cover authorizations and the process of review,
approval or waiver by an Institutional Review Board relating to research. Refer to the Division of
Research and their policies for conditions under which FAU faculty, staff, students, residents,
post-doctoral fellows and non-employees may obtain, create, use or disclose PHI for research
purposes.

3. **Documenting Disclosures.** When patient records are disclosed, FAU shall document
the date, name, and address of the recipient and a general description of the information
disclosed.\(^13\)

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\(^9\) F.S. §456.057(6); 45 C.F.R. §164.508(a)(2).
\(^10\) 45 C.F.R. §164.502(g)(3)(i).
\(^11\) F.S. §§ 384.30, 381.0051, 394.4784, and 397.501.
\(^12\) F.S. §456.057(7)(a)(4).
\(^13\) F.S. §456.057(11); 45 C.F.R.§164.528
4. **Minimum Necessary.** When patient records are disclosed, FAU shall only release the minimum information that is necessary to respond to a proper records request.

**VERIFICATION OF IDENTITY**

FAU shall make reasonable efforts to verify the identity of any patient seeking treatment as well as persons making a request that will involve a disclosure of PHI. FAU personnel may accept and rely upon evidence that appears reliable and reasonable. Such evidence includes documents and other written representations to substantiate a claim of identify or authority, unless FAU personnel has knowledge that there is a problem with the evidence supplied.

- A valid, government-issued photo identification will be accepted as valid identification.
- If a minor's parents are divorced, separated or not married, either parent may request and receive PHI relating to the child unless the court has issued an order that limits the non-custodial parent's access or the provider determines there is a risk to the child.
- A minor's PHI may not be disclosed to the minor's parent or guardian if the minor has consented to his or her own health care unless the minor provides his or her Authorization to the disclosure.
- **Exceptions:** The following are some, but not all, circumstances when a parent or guardian of a minor would not be considered a Legally Authorized Representative, and therefore not authorized to access the minor patient's PHI without the minor patient's Authorization:
  a. When a minor is emancipated;
  b. When a minor requests a medical examination or test for sexually transmitted diseases (including HIV);
  c. When a minor voluntarily self-admits into a substance abuse facility;
  d. When a minor requests outpatient mental health diagnostic/evaluation services; or
  e. When a minor requests outpatient crisis intervention therapy/counseling services.
- The following individuals may receive PHI, if they present a legal court document validating their identity as a/an:
  a. Executor/executrix of the estate of a deceased patient, or if no executor/executrix or administrator has been appointed, the surviving spouse or next of kin;
  b. Legally appointed guardian;
  c. Healthcare surrogate; or
  d. Person appointed under a durable power of attorney with authority defined.
- For governmental agencies, public health authorities, legal representatives, etc., the request for PHI should be made in writing on official letterhead.