



**HIPAA Policy – Use and Disclosure of Protected Health Information  
November 3, 2015**

**SCOPE**

This policy applies to Florida Atlantic University's Covered Entities and those working on behalf of the Covered Entities 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 Entities will obtain an Authorization from the individual or the individual's Legally Authorized Representative to use and disclose the individual's protected health information for purposes not related to treatment, health care operations or as otherwise required or permitted 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**

**Authorization** – Permission given by the individual to use and/or disclose protected health information about the individual. The requirements of a valid authorization are defined by the HIPAA regulations.

**Business Associate** - 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).

**Covered Entity** – A health plan, health care clearinghouse, or health care provider who transmits any health information in electronic form in connection with a transaction covered by the Privacy Rule; the Covered Entity refers to the health care components of FAU that engage in Covered Functions.

**Hybrid Entity** – A single legal entity that is a Covered Entity, performs business activities that include both Covered and non-Covered Functions, and that designates its health care components in accordance with the Privacy Rule.

**Individually Identifiable Health Information** – A subset of “health information,” including demographic information collected from an individual, and:

1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
2. Relates to the past, present, or future physical or mental health or condition of an individual; and
3. Identifies the individual, or might reasonably be used to identify the individual.

**Legally Authorized Representative** – A person authorized either by state law or by court appointment to make decisions, including decisions related to health care, on behalf of another person, including someone who is authorized under applicable law to consent on behalf of a prospective subject to the subject’s participation in the procedure involved in the research.

**Protected Health Information (PHI)** – Individually identifiable health information collected from an individual that is: 1) transmitted by electronic media; 2) maintained in electronic media; or 3) transmitted or maintained in any other form or medium by a Covered Component.

PHI encompasses information that identifies an individual or might reasonably be used to identify an individual and relates to: the individual’s past, present or future physical or mental health or condition of an individual; the provision of health care to the individual; or the past, present or future payment of health care to an individual.

PHI excludes individually identifiable health information in: a) education records covered by the Family Educational Rights and Privacy Act (FERPA); b) records described at 20 U.S.C. §1232g(a)(4)(B)(iv); c) employment records held by a covered entity in its role as employer; and d) regards to a person who has been deceased for more than 50 years.

**Psychotherapy Notes** – Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record.

Psychotherapy notes exclude medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

**TPO** – Treatment, payment and health care operations. The HIPAA Privacy Rule permits disclosure of PHI only for TPO or when a regulatory exception applies (e.g., public health reporting).

## **MAINTENANCE and OWNERSHIP OF HEALTHCARE RECORDS**

Health and financial records created as result of patient care encounters in any of FAU's Covered Entities are the property of FAU. Further, a health record shall be maintained for every individual who is evaluated or treated as a patient. FAU health records are considered hybrid records, consisting of both electronic and paper documentation.

All patient records must be stored so that they are available for use, but also physically and technologically secure. Information and records must be protected from unauthorized access, physical damage, and other reasonably foreseeable hazards.

## **PERMITTED USE AND DISCLOSURE OF PHI WITHOUT AN AUTHORIZATION – Treatment Payment and Health Care Operations**

Excluding PHI that contains mental health information, psychotherapy notes, HIV/AIDS-related information, sexually transmitted disease information, or substance abuse treatment information (e.g., “super-confidential” health information), PHI may generally be used or disclosed without an Authorization for the following purposes:

1. Internal use for treatment, payment or health care operations. Although HIPAA permits use and disclosure for payment purposes, Florida law requires patient authorization for such uses and disclosures. Authorization is generally obtained through a written Consent for Treatment.
2. Disclosure to the individual patient (and legal representatives) for treatment related purposes.
3. Limited verbal disclosure to family members or close friends directly involved in the patient's care or payment for care unless the individual patient restricts such disclosures.
4. Disclosures to Business Associates for treatment, payment or health care operations services or assistance, when a valid Business Associate Agreement is in place.
5. Disclosures required for mandatory reporting of suspected abuse or neglect.
6. Disclosures as part of a limited data set.
7. Disclosure for the purposes of fundraising. Permissible fundraising activities include appeals for money, sponsorship of events, etc. These activities do not include royalties or remittances for the sale of products to third parties (except auctions, rummage sales, etc.) that may be more akin to the sale of PHI. Such fund raising communications must clearly and conspicuously describe how the individual may opt out of receiving further fundraising communications and not require the individual to incur an undue burden or more than a nominal cost (e.g., toll-free phone number, email address, etc.).

## **OTHER PERMITTED LIMITED USES AND DISCLOSURES**

PHI may generally be used or disclosed with an Authorization for the purposes listed below. However, if PHI contains mental health information, psychotherapy notes, HIV/AIDS-related information or substance abuse treatment information, refer to the Section on Special Requirements for Use and Disclosure of Mental Health Information, Psychotherapy Notes, HIV/AIDS-Related Information or Substance Abuse Treatment Information of this policy for additional disclosure requirements.

1. Disclosures to a health oversight agency for oversight activities authorized by law including investigations, audits, inspections, licensure, or disciplinary actions.
2. Responses to subpoenas and court orders.
3. Disclosures for law enforcement purposes.
4. Reports to fulfill or further public health care requirements.
5. Disclosures for services and processes related to decedents.
6. Uses and disclosures to avert serious health or safety threats to the patient or public.
7. Uses and disclosures for special government functions (e.g., national security and intelligence activities, military and veterans activities, correctional institutions).
8. Uses and disclosures for cadaveric organ, eye or tissue donation purposes.
9. Disclosures for workers' compensation programs.
10. Disclosures for research (with IRB approval using a certificate or waiver of authorization).
11. Good faith disclosure by a whistleblower that believes FAU has engaged in unlawful conduct and the disclosure is to a health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct.
12. Uses or disclosures required by law (e.g., disclosures about victims of abuse, neglect or domestic violence) and other permitted or required exceptions.

## **GENERAL AUTHORIZATION REQUIREMENTS**

### **1. General Rule – Authorization Required for Use or Disclosure of PHI**

Except as otherwise outlined in the Section entitled Permitted Use and Disclosure of PHI for TPO or in the Authorization Exception of this policy, or as otherwise permitted or required by law, PHI may not be used or disclosed without a valid Authorization from the patient or the patient's representative. When a valid Authorization is obtained, the use and disclosure of PHI must be consistent as outlined in the Authorization.

### **2. Attorney Requests**

Attorney requests will be honored only upon receipt of a valid Authorization for Disclosure of Protection Health Information signed by the patient or the patient's representative, or a court order directing FAU to disclose information to a specified attorney. If PHI is disclosed in response to a court order, only the PHI expressly authorized by the court order may be disclosed.

### **3. Marketing**

An Authorization is required for any use and disclosure of PHI for marketing. The only exception to the Authorization requirement for marketing purposes is if the communication is: a) a face-to-face communication made by a covered entity to an individual; or b) a promotional gift of nominal value provided by the covered entity. If the marketing involves direct or indirect remuneration to the covered entity from the third party, the Authorization must state such remuneration is involved.

#### **4. Sale of PHI**

An Authorization stating that FAU will receive remuneration in exchange for the disclosure of Protected Health Information is required for any disclosures of PHI which constitutes a sale of PHI. Sale of PHI refers to a disclosure of PHI by a covered entity or business associate where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the PHI in exchange for the PHI except under the following circumstances:

- a. Is for public health purposes and meets the requirements for disclosure of a limited data set;
- b. Is for research purposes where the remuneration is a reasonable cost-based fee to cover the cost to prepare and transmit the PHI;
- c. Is for treatment and payment purposes;
- d. Is for the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence;
- e. Is to or by a business associate for activities that the business associate undertakes on behalf of the covered entity and the remuneration provided is by the covered entity to the business associate for the performance of such activities;
- f. Is to the individual patient and the remunerations is for the cost of preparing the PHI;
- g. Is required by law; or
- h. Is for other permitted purposes and the remuneration is a reasonable, cost-based fee to cover the cost to prepare and transmit the PHI for such purpose or a fee otherwise expressly permitted by other law.

#### **5. Minors**

In situations where the parent or guardian of an unemancipated minor is legally acting on behalf of the minor as the minor's Legally Authorized Representative and where an Authorization to use or disclose the minor's PHI is required, the Authorization may be signed by the minor's parent or guardian.

If the minor has the legal authority to act on his or her behalf, then the minor must sign his or her own Authorization and must authorize disclosure of the minor's PHI to the parent or guardian.

#### **6. Research**

This policy does not cover authorizations and the process of review, approval or waiver by an institutional review board for research purposes. 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.

## **MINIMUM NECESSARY RULE**

Health care providers and staff must make reasonable efforts to limit uses, disclosures, and requests for PHI to the minimum necessary to accomplish the intended purposes of the use, disclosure or request.

## **USE AND DISCLOSURE OF “SUPER-CONFIDENTIAL” PHI**

Health information containing mental health information, psychotherapy notes, HIV/AIDS-related information, sexually transmitted disease information, and genetic information (“super-confidential” PHI) is afforded special protections under state and federal laws that are more stringent than HIPAA. Accordingly, “super-confidential” PHI shall not be released or made public by anyone except under the following circumstances:

1. With the consent of the individual to which the information applies;
2. For statistical and research purposes so long as the information is summarized or used so that no person can be identified and no names revealed;
3. To appropriate state or federal agencies, public health agencies or courts of appropriate jurisdiction, to enforce or comply with any applicable laws; or
4. In a medical emergency to protect the health or life of a named party, or an injured officer, firefighter, paramedic, or emergency medical personnel.

FAU must obtain an Authorization for any use or disclosure of psychotherapy notes, except:

1. To carry out the following treatment, payment or health care operations:
  - a. Use by the originator of the psychotherapy notes for treatment;
  - b. Use or disclosure by the covered entity for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or
  - c. Use or disclosure by the covered entity to defend itself in legal action or other proceeding brought by the individual.
2. Use or disclosure that is: required by the Secretary of HHS to investigate or determine the covered entity’s compliance, required by law, required for health oversight activities, related to decedents, or for purposes of averting a serious threat to health or safety.

## **VERIFICATION OF IDENTIFICATION**

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 protected health information. FAU personnel may accept and rely upon relevant 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.

The following will be accepted as valid identification:

1. Patient if adult or emancipated minor: government-issued photo identification.
2. Parent or guardian if a minor: If the 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. The parent or guardian with exclusive access must inform FAU of any change that may affect the use and disclosure of PHI of the minor.

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.
3. 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.
4. For governmental agencies, public health authorities, legal representatives, etc., the request for PHI should be made in writing on official letterhead.

## **APPENDIX**

### Authorization for Use or Disclosure of Protected Health Information