SECTION 3: USES & DISCLOSURES OF PHI

3.1. General Rules

POLICY

1. General Rules for Uses and Disclosures of PHI:
   a. The University of Florida (UF) will use and disclose protected health information (PHI) only as permitted or required by federal privacy regulations such as HIPAA, other privacy-related federal laws, and relevant Florida laws. More stringent state laws will preempt HIPAA rules.
   b. Uses and disclosures that do not require a patient or representative’s written authorization are described below; all other uses and disclosures require written authorization.
   c. UF is permitted to use and disclose PHI for purposes not otherwise permitted by the Privacy Rule, but only if a valid written authorization has been obtained from the individual who is the subject of the information. Uses and disclosures which always require written authorization are listed below.
      i. Most uses and disclosures of psychotherapy notes (See 3.2 Specific Types of Health Information);
      ii. Uses and disclosures for marketing purposes (See 3.6 Marketing and Sale of PHI); and
      iii. Uses and disclosures which meet the definition of a sale of PHI (See 3.6 Marketing and Sale of PHI).
   d. Health information and records owners at UF are responsible for maintaining a record of all disclosures of health information (See 4.7 Right to an Accounting of Disclosures).

2. Information Subject to More Stringent Laws: Health information that is subject to specific privacy rules mandated by state or federal laws (mental health, substance abuse, STD, HIV/AIDS, genetic information) will only be used and disclosed in accordance with those laws (See 3.2 Specific Types of Health Information).

3. Organized Health Care Arrangement (OHCA):
   a. UF participates in an Organized Health Care Arrangement, as defined by HIPAA, with affiliated health care providers and covered entities (CE’s) and will routinely disclose PHI about patients to the other participants in the arrangement for treatment, payment, and health care operations (See 1.1 Relationship of University of Florida Components and Entities Explained).
   b. Disclosing PHI to other covered and non-covered entities: UF may disclose PHI it creates, receives, and maintains to other entities outside the UF OHCA:
      i. Upon request, to a health care provider who is providing treatment to the patient;
      ii. Upon written authorization by the patient or legal representative for any other purpose;
      iii. As required by law.

4. Minimum Necessary Rule: Healthcare providers and staff must make every effort to reasonably limit uses, disclosures, and requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request. See 3.10 Minimum Necessary Rule.

5. Permitted Uses and Disclosures without a patient’s written authorization:
a. Internal uses for Treatment and Health Care Operations.
   - HIPAA permits uses and disclosures of PHI for payment purposes without the patient’s written authorization.
   - However, Florida Statutes require patient permission for such uses and disclosures; consent and authorization is usually obtained in the Consent and Authorization to Treat/Notice of Limited Liability form.

b. Disclosures to Patients and their Legal Representatives for treatment-related purposes
   - UF requires a written authorization for providing copies of personal health or financial records to the patient or representative for their personal use, not related to treatment.

c. Limited verbal disclosures to family members and close friends directly involved in the patient’s care or payment for care unless the patient restricts such disclosures (See 3.3: Patients’ Family Members and Friends).

d. Disclosures to Business Associates for treatment, payment or health care operations services or assistance, when a valid Business Associate Agreement is in place (See 3.8 Business Associates and Vendors).

e. Disclosures to vendors and technicians for installation and maintenance of equipment, software, and other health care items that involve giving the vendor temporary access to PHI. Arrangements must be specified in the Purchase Order or contract and approved by the Privacy Office and the Information Security Office.

6. Other Limited Uses and Disclosures Permitted without the patient’s written authorization, if mandated and governed by other state or federal laws:

   Note: Refer to your supervisor or to the Privacy Office for authorization before disclosing any information. Disclosures under Florida law may differ from federal law – see also the Disclosures of PHI Under Florida Law Table.

   a. For Public Health activities: State and local health departments, FDA, CDC, OSHA (45 CFR 164.512(b));
   
   b. Reporting for Health Oversight Activities: OCR, FDA, applicable federal or state agencies, etc. (45 CFR 164.512(d));
   
   c. Disclosures for judicial and administrative proceedings, such as subpoenas, court orders, attorney requests, etc. (45 CFR 164.512(e)) See 2.6 Subpoenas, Court Orders, Attorney Requests;
   
   d. Disclosures to Law Enforcement Officials to comply with a court order, subpoena or summons, investigative demand or other written request. (45 CFR 164.512(f)(1)). See 2.6 Subpoenas, Court Orders, Attorney Requests;
   
   e. To respond to a law enforcement request for PHI for purposes of identifying or locating a suspect, fugitive, material witness, with limited disclosures of PHI (information related to the individual’s DNA, dental records, body fluid or tissue typing, samples, or analysis cannot be disclosed under this provision, but may be disclosed in response to a court order, warrant, or written administrative request) (45 CFR 164.512(f)(2));
   
   f. Disclosures made by workforce members who are victims of a crime about a suspected perpetrator of a crime is made by a workforce member who is the victim of a crime. See e. above for disclosure limitations (45 CFR 164.502(j)(2));
g. For services and processes related to decedents, such as coroners and medical examiners, and funeral directors (45 CFR 164.512 (g));

h. For averting a serious threat to health or safety (45 CFR 164.512(j));

i. Disclosures about victims of abuse, neglect or domestic abuse (45 CFR 164.512(c)). See Exhibit: Disclosures Under Florida Law for clarification; for example, reporting suspected domestic violence without informed consent is considered unethical in the state of Florida;

j. For specialized government functions: armed forces and foreign military personnel, national security and intelligence activities or protective services (45 CFR 164.512(k)); For Workers’ Compensation programs (45 CFR 164.512(l));

k. For IRB-approved only Research Studies, using a Certificate or Waiver of Authorization (45 CFR 164.512(i));

l. To organizations that handle organ procurement or organ, eye or tissue transplantation or to an organ donation bank or to facilitate organ or tissue donation and transplantation (45 CFR 164.512(h));

m. For disaster relief purposes: A CE may use or disclose PHI to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities. The requirements related to the presence of the individual apply to such uses and disclosure to the extent that the CE, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances (45 CFR 164.510(b)(4)).

n. When the individual is deceased: (45 CFR 164.510(b) (5)). See 3.3 Patients’ Family Members and Friends.

7. Disclosures of PHI Directly to Minors

   a. UF may treat minors as adults when the minor patient presents for certain types of treatment of care. UF may treat the minor patient as an adult, and UF is not permitted to disclose PHI about these treatments to the minor patient’s parent or guardian unless the patient allows UF to do so or UF is required by law to make the disclosure.

   b. UF may disclose PHI directly to minors in the following circumstances:

      i. If the minor is married, was ever married, or is otherwise emancipated, the minor may authorize Disclosure of PHI for himself/herself or for his/her minor child.

      ii. An unwed, pregnant minor may give consent for Disclosures of PHI only related to her pregnancy and not for other unrelated conditions.

      iii. A minor may give consent for Disclosure of PHI relating to care for a sexually transmissible disease and for voluntary treatment for drug abuse/dependency.

DEFINITIONS

1. **Disclose:** To release, transfer, provide access to, or divulge in any manner, PHI held by UF.

2. **Extra-sensitive Information:** Information pertaining to Substance Abuse, Mental Health Conditions, HIV Testing, Sexually Transmitted Diseases, and Genetic Information, as defined and protected by specific federal and state laws and regulations.

3. **Health Care Operations:** Any of the following activities of a CE:
a. Conducting or arranging for Quality Assessment and Improvement activities, health care reviews, legal services, and auditing functions, including fraud/abuse detection and compliance programs;

b. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, conducting training programs, accreditation, certification, licensing, or credentialing activities;

c. Business planning and development, and business management and general administrative activities of the entity.

4. **Payment:** Activities undertaken by a health care provider or health plan to obtain or provide reimbursement for the provision of health care.

5. **Professional Need to Know:** A required level of access to specific and limited information necessary to complete assigned work.

6. **Treatment:** The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one provider to another.

7. **Use:** To employ, apply, utilize, share, examine, or analyze PHI held by UF.

**REQUIREMENTS**

1. **Standard:** A CE or business associate may not use or disclose PHI, except as permitted or required by the Privacy Rule.

2. **Permitted uses and disclosures:** A CE is permitted to use or disclose PHI as follows:
   a. To the individual;
   b. For treatment, payment, or health care operations, as permitted by the Privacy Rule;
   c. Incident to a use or disclosure otherwise permitted or required by the Privacy Rule, provided that the CE has complied with the minimum necessary requirements;
   d. Pursuant to and in compliance with a valid authorization (except for uses and disclosures of genetic information that are prohibited for underwriting purposes);
   e. Pursuant to an agreement or as otherwise permitted for uses and disclosures requiring an opportunity for the individual to agree or to object;

3. **Required disclosures:** A CE is required to disclose PHI:
   a. To an individual, when requested, or otherwise required by, the Privacy Rule; and
   b. When required by the Secretary (of HHS) to investigate or determine the CE’s compliance with HIPAA.

4. **Accounting for disclosures:** An individual has a right to receive an accounting of disclosures of PHI made by a CE. See 4.7 Accounting for Disclosures.

**PROCEDURES**

1. **For disclosures to patients or patient representatives,** see 4.2 Individual’s Rights to Access their Health Records, 3.3 Patients’ Family Members and Friends, and 1.5 Privacy Safeguards.

2. **For use of patient records for depositions,** see 2.5 Health Records for Depositions.
3. For disclosures in response to subpoenas or court orders (i.e., attorney requests), see 2.6 Subpoenas, Court Orders, Attorney Requests.

4. Responding to Requests for copies of PHI – General Rules:
   a. After receiving a valid authorization, subpoena, court order, or a patient request that does not require an authorization, process the request for copies of records as follows:
   b. Even though 30 days are available to respond to requests for records, respond within 10 business days of receipt of the request whenever possible. If unable to respond within the first 10 days, notify the requestor of the reason for the delay and progress of the request. If unable to respond within 30 days, notify the Privacy Office immediately.
   c. For paper records (only): Number each original page to be copied; number front and back of pages with documentation on both sides, counting each side as a separate page.
   d. Provide copies in the format requested by the patient, if possible: photocopy, print out, scan, or otherwise duplicate only the portions of the record specifically requested. If copies are reproduced onto electronic media, encrypt the media.
   e. Create and attach a cover letter, including the patient’s name and record number, the names of the reports/documents copied, the number of pages/documents copied, the date-range of the materials, and the amount charged and paid.
   f. File or scan the patient’s authorization or letter of request, the subpoena, court order, or attorney request with authorization, a copy of the cover letter, a copy of the certification (if one was provided), and any return mail receipts into the patient’s record.
   g. If the request is also for a patient’s billing records, fax/scan a copy of the request to the Patient Services & Accounting Department so they can send the patient’s billing records to the requestor.

5. Record and Describe All Disclosures of Health Information:
   a. In addition to placing or scanning all request-related documents into the patient’s record, also record the disclosure in a permanent log and retain the log in the clinic or department. The log may be maintained manually, on paper, or electronically, in a secure computer database, and should include:
      i. The patient’s name and health record number
      ii. The date the request was received
      iii. The name and address of the requestor
      iv. The purpose of the request
      v. A list of the reports that were disclosed and the date of disclosure, or the disposition of the request, if no information was disclosed.
   b. Clinics and departments using an outside copying service may rely on the disclosure log maintained by the company and left with the department/clinic after each visit.

6. For non-authorized disclosures that were not related to treatment or health care operations, enter the appropriate information in UF’s online Disclosure Tracking System (See 4.7 Accounting for Disclosures for more information and instructions).

7. Responding to Media Requests: Direct any requests from journalists and news entities for information concerning a patient’s condition (when the patient is currently undergoing treatment) to the UF Health Communications.
8. **Responding to Agencies that Claim Exemption from HIPAA Privacy Regulations:** Agencies and entities such as the American Red Cross or other disaster relief assistance agencies, WIC, law enforcement, and schools may claim exemption from the requirements of federal and state privacy laws. However, the health care components of UF are not exempt from HIPAA. Do not disclose PHI from UF to third parties without specific written authorization from the patient or representative or a legally issued subpoena or court order. Refer all such requests to the Privacy Office, if necessary.

**REFERENCES:**

1. HIPAA: 45 CFR §160.103 Definitions; §164.501 Definitions; §164.502 Uses and Disclosures: General Rules; §164.506 Uses and Disclosures to carry out treatment, payment, or health care operations; §164.508 Uses and disclosures for which an authorization is required; §164.512(e) Disclosures for judicial and administrative proceedings; §164.514(f) Other Requirements.

2. Florida Statutes (see Exhibits below).

**EXHIBITS:**

1. Disclosures of PHI Under Florida Law Table
### Disclosures of PHI under Florida Law Table

<table>
<thead>
<tr>
<th>Reason for Disclosure</th>
<th>Permitted by HIPAA</th>
<th>Florida Law</th>
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<tr>
<td><strong>Child Abuse</strong></td>
<td>A health care provider may disclose PHI to a public authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect (45 CFR 164.512(b)(1)(ii)).</td>
<td>Any person, including a health care provider, who knows or has reasonable cause to suspect child abuse, abandonment or neglect by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, must report such knowledge or suspicion to the Department of Children and Families (DCF) Central Abuse Hotline. (F.S. 39.201(1))</td>
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<td><strong>Vulnerable Adult Abuse</strong></td>
<td>A health care provider may disclose PHI about an individual whom the health care provider reasonably believes to be a victim of abuse or neglect to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse or neglect (45 CFR 164.512(c)(1)(i)).</td>
<td>Any person who knows or has reasonable cause to suspect the abuse, neglect or exploitation of vulnerable adults must immediately report such knowledge to the Department of Children and Families (DCF) Central Abuse Hotline (F. S. 415.1034(2)).</td>
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<td><strong>Deaths</strong></td>
<td>A health care provider may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law (45 CFR 164.512(g)(1)).</td>
<td>Any person in the district where a death occurs who becomes aware of the death of any person in the State occurring under the following circumstances, must report such death and circumstances to the district Medical Examiner (F. S. 406.12): 1) a result of criminal violence 2) by accident 3) by suicide 4) suddenly, when in apparent good health 5) unattended by a practicing physician or other recognized practitioner 6) in any prison or penal institution 7) in police custody 8) in any suspicious or unusual circumstance 9) by criminal abortion 10) by poison 11) by disease constituting a threat to public health 12) by disease, injury of toxic agent resulting from employment</td>
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<td><strong>Gunshot Wounds or Other Life-threatening Injuries</strong></td>
<td>A health care provider may disclose PHI as required by law, including laws that require the reporting of certain types of wounds or physical injuries (45 CFR 164.512(f)(1)(i)).</td>
<td><strong>Required</strong> Any physician, nurse, or employee of a hospital, sanitarium, clinic, or nursing home treating or receiving a request for treatment shall report immediately to local law enforcement any gunshot wound or life-threatening injury, indicating an act of violence (F. S. 790.24).</td>
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<td><strong>Sexual Battery</strong></td>
<td>A health care provider may disclose PHI to a law enforcement official that the health care provider believes in good faith constitutes evidence of criminal conduct on the premises (45 CFR 164.512(f)(5)).</td>
<td><strong>Required</strong> Any person who observed the commission of a crime of sexual battery must immediately report such offense to a law enforcement official (F.S. 794.027). Instructional personnel or administrative personnel having knowledge that a sexual battery has been committed by a student upon another student must report the offense to a law enforcement agency having jurisdiction over the school or over the place where the sexual battery occurred, if not on the grounds of the school (F. S. 1012.799).</td>
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<td><strong>Burns</strong></td>
<td>A health care provider may disclose PHI as required by law, including laws that require the reporting of certain types of wounds or physical injuries (45 CFR 164.512(f)(1)(i)).</td>
<td><strong>Required</strong> Any person who treats, or is requested to treat, second or third degree burns affecting 10% or more of the body, to report such treatment to the sheriff’s department if they determine the burns were caused by a flammable substance and if they suspect the injury is a result of violence or other unlawful activity (F.S. 877.155).</td>
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<td><strong>Deaths Resulting from Abuse or Neglect</strong></td>
<td>A health care provider may disclose PHI to a law enforcement official for the purpose of alerting law enforcement of the death of an individual if the health care provider has a suspicion that the death may have resulted from criminal conduct (45 CFR 164.512(f)(4)).</td>
<td><strong>Required – with conditions</strong> Any person who is required to report cases of suspected abuse, abandonment, or neglect, who has reasonable cause to suspect that a child died as a result of child abuse, abandonment, or neglect must report his or her suspicion to the appropriate Medical Examiner (F. S. 39.201(3)).</td>
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<td><strong>DUI</strong></td>
<td>A health care provider may disclose PHI if the health care provider believes in good faith the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the disclosure is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. (45 CFR 164.512(j)(1)(i))</td>
<td><strong>Permitted</strong> If a health care provider, who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of medical treatment, that the persons' blood-alcohol levels meets or exceeds 0.08 grams of alcohol per 100 ml. Of blood, the health care provider may notify any law enforcement officer or law enforcement agency. (F. S. 316.1933 (2)(a))</td>
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<td>Impaired Drivers</td>
<td>A health care provider may disclose PHI if the health care provider believes in good faith the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the disclosure is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat (45 CFR 164.512(j)(1)(i)).</td>
<td>Permitted A physician, person or agency, having knowledge of any licensed drivers or applicant’s mental or physical disability to drive or need to obtain or to wear a medical ID bracelet is authorized to report such knowledge to the Department of Highway Safety and Motor Vehicles (F.S. 322.126(2)).</td>
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<td>Mental Health Communications: Clinical Social Worker, Mental Health Counselor, or Psychotherapist</td>
<td>A health care provider may disclose PHI if the health care provider believes in good faith the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the disclosure is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat (45 CFR 164.512(j)(1)(i)).</td>
<td>Permitted The confidentiality between a clinical social worker, mental health counselor, or psychotherapist may be waived when there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society and the clinical social worker, mental health counselor, or psychotherapist communicates the information only to the potential victim, appropriate family members, or law enforcement or other appropriate authorities (F.S. 491.0147(3)).</td>
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<td>Mental Health Communications: Psychiatrist</td>
<td>A health care provider may disclose PHI if the health care provider believes in good faith the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the disclosure is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat (45 CFR 164.512(j)(1)(i)).</td>
<td>Permitted A psychiatrist may disclose patient communications to the extent necessary to warn any potential victim or communicate a threat to a law enforcement agency where: 1) The patient is engaged in a treatment relationship with the psychiatrist; 2) The patient has made an actual threat to physically harm an identifiable victim or victims; and 3) The treating psychiatrist makes a clinical judgment that the patient has the apparent capability to commit such an act and that it is more than likely than not that in the near future the patient will carry out the threat (F.S. 456.059).</td>
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| Domestic Violence    | A health care provider may report domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such domestic violence. (45 CFR 164.512(c)(1)) | Permitted – with conditions See Law Enforcement below: F.S. 456.057(5)(a)  
**Note:** Reporting suspected domestic violence without informed consent is considered unethical in the state of Florida and may leave the healthcare provider who reported the violence open to civil action.  
Except for gunshot wounds or other life-threatening injuries indicating violence. (F.S. 790.24). |
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<td>Law Enforcement:</td>
<td>A health care provider may disclose PHI to a law enforcement official's request to locate or identify a suspect, fugitive, material witness or missing person. (45 CFR 164.512(f)(2)).</td>
<td>Medical records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. Records may be furnished without written authorization...upon issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient’s legal representative by the party seeking such records. (F S. 456.057(7)(a))</td>
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<td>Law Enforcement:</td>
<td>A health care provider may disclose PHI in response to a law enforcement official's request for information about a person suspected to be a victim of a crime if the individual agrees, or if certain requirements are met, if consent is not possible because of incapacity or emergency circumstance. (45 CFR 164.512(f)(3))</td>
<td>Except for gunshot wounds or life-threatening injury indicating violence. (F. S. 790.24) Medical records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. (F. S. 456.057(7)(a))</td>
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