SECTION 3: USES & DISCLOSURES OF PHI

3.5. Fundraising

POLICY

1. Uses and Disclosures for Fundraising: The University of Florida (UF) will use and disclose protected health information (PHI) for fundraising purposes only as permitted by the federal privacy regulations and relevant Florida laws.

2. Opting-Out:
   a. Individuals are permitted to “opt out” of receiving solicitations and materials, whether verbal, written or electronic, concerning fundraising.
   b. UF shall:
      i. In a clear and conspicuous manner, provide an opportunity for the recipient of the communications to elect not to receive any further such communication;
      ii. Provide methods for opting out that will not cause the recipient to incur an undue burden or more than a nominal cost.
      iii. Make every effort to ensure that individuals who request to opt out of receiving fundraising communications do not receive them.
   c. The method for an individual to elect not to receive further Fundraising Communications (i.e., to request to opt out) may not cause the individual to incur an undue burden or more than nominal cost. For example, requiring the individual to write and mail a request to UF Health Shands would create an undue burden and is not permitted.
   d. Appropriate opt-out language will appear on all Fundraising Communications in a conspicuous fashion. Conspicuous means that the opt-out information is clearly visible to the individual and uses the same sized font as used in the body of the Fundraising Communication (exceptions are granted for larger sized items, like posters).
   e. When speaking with an individual about fundraising activities, staff must either give an opt-out verbally or give the individual a Provider Referral Card with the opt-out language on it.

3. Opt-Out List
   a. The Privacy Office will create and maintain an Opt-Out List containing the names of individuals who have opted out from receiving Fundraising Communications and will make the Opt-Out List available to the UF Health Development Office and to Decision Support Services (DSS) to facilitate the screening of individuals.
   b. The Development Office and Development Officers shall screen all potential recipients of Fundraising Communications (i.e., potential or known donors) against the current Opt-Out List before sending Fundraising Communications to individuals.

4. Authorization
   a. Written authorization is required from patients for uses or disclosures of PHI that exceed federal or state defined limits for fundraising.
b. Without a more specific written authorization from the patient, UF may only use (internally) or disclose (to an external business associate) a limited amount of PHI, as defined by the Privacy Rule, for the purpose of raising funds for its own benefit.

5. Institutionally-related foundations involved in fundraising for UF’s Health Science Center must:
   a. Have written authorization from the patient or the patient’s legal representative to collect or maintain other data (beyond what is allowed by HIPAA) about individual patients.
   b. Have a valid Business Associate Agreement in place in addition to a contract for services before an external fundraiser may use the PHI. The business associate must agree to only use the PHI for UF’s fundraising activities. See also 3.8 Business Associates and Vendors

6. The Privacy Office shall:
   a. Ensure the maintenance and retention of the Opt-Out List;
   b. Facilitate the requests of individuals who opt out of receiving fundraising communications.
   c. Retain original "opt out" requests from patients in the Privacy Office for at least six years after the request was last known to be in effect, or the patient's final episode of care, whichever is later.
   d. Monitor fundraising activities, which may include:
      i. Review of fundraising communications, mailing lists, and call lists prepared for healthcare-related fundraising purposes.
      ii. Periodically monitor UF's healthcare fundraising entity to ensure that it is providing and maintaining Authorizations to Use or Disclose PHI, as required.

DEFINITIONS

1. **Fundraising Communication**: A communication to an individual that is made by a covered entity, an institutionally-related foundation, or a business associate on behalf of UF for the purpose of raising funds for UF (e.g., appeals for money, sponsorship of events, etc.).

2. **Fundraising**: To solicit monetary and other resources for an institution or organization; an activity "for the specific purpose of raising funds" for the institution, rather than a general charitable purpose.

3. **Healthcare Operation**: "Any of the... activities of a covered entity (CE) listed in the Privacy Rule, to the extent that the activities are related to covered functions," which, for fundraising, applies to “(6) Business management and general administrative activities of the entity, including, but not limited to: (v) ...fundraising for the benefit of the CE.”

4. **Institutionally-related Foundation**: Qualified under the tax code (e.g., 501(c) (3) that has an "explicit linkage" to the covered entity (CE), or to a group of organizations of which the CE is one. "The term does not include an organization with a general charitable purpose, such as to support research about or to provide treatment for certain diseases" even if some of its resources may be given to the CE.

5. **Opt-Out**: To express a desire to no longer participate in a given activity; express instruction by a customer, or a recipient of a mail, email, or other direct delivery to stop the sender from sending information or more messages.

PRIVACY REQUIREMENTS

1. **PHI for Fundraising**: A CE may use, or disclose to a business associate or to an institutionally related foundation, the following PHI, for the purpose of raising funds for its own benefit, without an authorization:
a. Demographic information relating to an individual (i.e., name, address, other contact information, age, gender, and date of birth);

b. Dates of health care provided to an individual.

c. Department of service (i.e., general department of treatment, such as cardiology, oncology, or pediatrics);

d. Treating physician;

e. Outcome information (i.e., successful, sub-optimal, or deceased); and

f. Health insurance status, (i.e., whether the patient has health insurance or not; the insurance carrier’s name, type of insurance, amount of coverage, etc. as well as other payment arrangements are not included.)

2. Using Family Members’ Information.

a. The patient’s spouse, other family members, or friends’ contact information must not be used for fundraising purposes.

b. However, in cases where the patient is a minor, UF may use only the minor’s guarantor’s contact information consistent with this policy.

3. Use of Other PHI: The use of other PHI, such as diagnosis, treatment plan, or prognosis for fundraising requires written patient authorization.

4. Fundraising Requirements: The CE may not use or disclose PHI for fundraising purposes as otherwise permitted by the Privacy Rule unless a statement concerning the use and disclosure is included in the CE’s notice of privacy practices.

a. With each fundraising communication made to an individual, a CE must provide the individual with a clear and conspicuous opportunity to elect not to receive any further fundraising communications.

b. The method for an individual to elect not to receive further fundraising communications may not cause the individual to incur an undue burden or more than a nominal cost.

c. A CE may not condition treatment or payment on the individual’s choice with respect to the receipt of fundraising communications.

d. A CE may not make fundraising communications to an individual where the individual has elected not to receive such communications.

e. A CE may provide an individual who has elected not to receive further fundraising communications with a method to opt back in to receive such communications.

PROCEDURES

1. Opting Out of Receiving Fundraising Material

a. UF or an institutionally-related foundation shall provide the individual with a clear and conspicuous description of how the individual may choose not to receive any further Fundraising Communications in each Fundraising Communication made to an individual. This requirement applies to all communications whether they are written, spoken, or electronic.

b. The method for an individual to elect not to receive further Fundraising Communications (i.e., to request to opt out) may not cause the individual to incur an undue burden or more than nominal cost.
For example, requiring the individual to write and mail a request to UF would create an undue burden and is not permitted.

2. Appropriate opt-out language will appear on all fundraising materials in a conspicuous fashion. Conspicuous means that the opt-out information is clearly visible to the individual and uses the same sized font as used in the body of the Fundraising Communication (exceptions are granted for larger sized items, like posters).

3. Opt out requirements for fundraising communications apply when UF is using or disclosing PHI to target the fundraising communication. If UF does not use PHI to send fundraising materials, then the opt-out requirements do not apply. For example, if UF uses a public directory to mail fundraising communications to all residents in a particular geographic service area, then the opt-out requirements are not applicable.

4. Opt-out information provided by UF shall include the following, minimum information:
   a. Name of entity or organization to contact, and
   b. A combination of a toll-free phone number, or an email address, or a link to a web-based opt-out form.
   c. A physical address, such as a Post Office Box, may also be included as long as there is another option provided (see above).

5. Sample opt-out language:
   a. If you prefer not to be contacted for future fundraising activities, please notify us and provide your full name, address and phone number to: UF Privacy Office, PO Box 103175, Gainesville, FL 32610, or call 1-866-876-4472 or 1-800-284-6472, or visit http://giving.ufandshands.org/opt-out.
   b. Other opt-out language may be used with the approval of the Privacy Office and the appropriate Development Office.

6. Opt-Out List
   a. The UF Privacy Office, in conjunction with the UF Health Privacy Office, will create and maintain an Opt-Out List containing the names of individuals who have opted out from receiving Fundraising Communications and will make the Opt-Out List available to the UF Health Development Office and to UF Health Decision Support Services (DSS) to facilitate the screening of individuals.
   b. The Development Office and Development Officers shall screen all potential recipients of Fundraising Communications (i.e., potential or known donors) against the current Opt-Out List before sending Fundraising Communications to individuals.
   c. Individuals present on the Opt-Out List will NOT be sent Fundraising Communications, approached for an ask encounter, or solicited for fundraising donations by any other means.
   d. Individuals who requested to opt out from receiving Fundraising Communications may request to opt back in at any time. If this occurs, staff shall collect the individual’s name and contact information and provide to either the Privacy Office or to the Development Office. Additionally, when an individual has opted out of Fundraising Communications makes a donation to UF, it does not serve, absent a separate choice to opt back in, for UF to automatically add the individual back on a Fundraising Communication mailing list.
   e. All requests to opt out of receiving Fundraising Communications will be managed by and shared with the Privacy Office.

7. Authorizations
a. A written authorization from the patient or the patient’s personal representative is required before using or disclosing (e.g. sharing) PHI that exceed federal or state defined limits for fundraising as described in this policy.

b. Staff shall obtain written authorization before sharing PHI in Fundraising Communications or other fundraising materials. For example, PHI may include a patient’s photograph, story or testimonial that is sent in a letter, brochure or other materials to potential donors.

c. Staff shall obtain written authorization before using a patient’s diagnosis, nature of services provided, or detailed treatment information for fundraising purposes.

d. The Development Office, Development Officers or other staff designated by the Development Office may facilitate and collect patient authorizations.

e. Completed authorizations shall be retained for no less than 6 years from the date signed or the end of the authorization period (whichever is later) unless the authorization is part of the patient health record, which requires a 10-year retention period.

REFERENCES
1. HIPAA: 45 CFR §164.501 Definitions, §164.514(f) Fundraising Communications
2. HITECH Act: Sec. 13046(b) Opportunity to Opt Out of Fundraising

EXHIBITS