



**New Jersey Institute of Technology  
University Policies and Procedures**

**Number: GC: H-002  
Date of Issue: July 2014**

***Subject: Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)***

**A. OVERVIEW**

It is the policy of New Jersey Institute of Technology (“NJIT”) to protect and safeguard the Protected Health Information (“PHI”) created, acquired, and maintained by its Health Care Component (“HCC”) in accordance with the Privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and as amended, and per applicable state laws.

**B. PURPOSE**

The purpose of this policy is intended to provide guidance to NJIT personnel with regard to the protection of the privacy rights of individuals by (1) establishing rules related to the internal and external use and disclosure of PHI; (2) affording individuals access and information regarding the use and disclosure of their PHI; and (3) implementing administrative procedures intended to assist individual and NJIT personnel with regard to HIPAA.

This policy supersedes and replaces existing policies and procedures of any NJIT HCC relating to the use and disclosure of PHI. HCCs may maintain additional procedures relating to the use and disclosure of PHI only to the extent that they do not conflict with this policy. HCCs may add to or supplement the HIPAA related forms only after first consulting the NJIT Privacy Official.

This policy applies to all PHI, regardless of the form in which it is created or maintained (verbal, written, or electronic).

**C. DEFINITIONS**

Authorization	The formal grant of authority by an individual for the use and/or disclosure of his/her PHI to a third party.
Business Associate	A person or entity not employed by the NJIT that creates, receives, maintains, or transmits PHI for a covered function or activity, for or on behalf of the NJIT. Such activities may include, but are not limited

	to, billing; repricing; claims processing and administration; data analysis; legal, accounting, and actuarial services; certain individual safety activities; consulting; utilization review; quality assurance; and similar services or functions. A Business Associate may be a Covered Entity. 45 C.F.R. § 160.103.
Covered Entity	A health care provider, or HCC of NJIT, that transmits PHI using one of the following transaction standards: (a) Health Care claims or equivalent encounter information; (b) Health Care payment and remittance advice; (c) coordination of benefits; (d) Health Care claims status; (e) enrollment and disenrollment in a health plan; (f) eligibility for a health plan; (g) health plan premium payments; (h) referral certification and authorization; (i) first report of injury; (j) health claims attachments; and (k) other transactions that the Department of Health and Human Services may prescribe by regulation. 45 C.F.R. § 160.103.
Covered Functions	Functions that make an NJIT HCC a health plan, a health care provider, or a health care clearing house. 45 C.F.R. § 160.103.
Data Use Agreement	An agreement between a HCC and the recipient of the PHI in which the HCC discloses a limited data set for purposes of research, public health or health care operations. These agreements are required to restrict the use of the PHI in the limited data set to a specified purpose, to safeguard the PHI and to assure that the individual whose PHI is included in the limited data set will not be identified by the recipient.
De-Identified Health Information	Health information that does not identify a person and that does not contain information that can identify or link the information to the person to whom the information belongs.
Designated Record Set	A group of records maintained by or for an NJIT HCC that includes the medical and billing records about individuals or that is used, in whole or in part, by NJIT Personnel to make decisions about individuals, regardless of who originally created the information. A Designated Record Set does not include: (a) duplicate information maintained in other systems; (b) data collected and maintained for research; (c) data collected and maintained for peer review or risk management purposes; (d) psychotherapy Notes; (e) information compiled in reasonable anticipation of litigation or administrative action; (f) employment records; (g) education records covered by FERPA (h) information subject to 42 USC 263(a) (CLIA) or exempt under 42 CFR 493.3(a)(2)(CLIA); and (i) source data interpreted or summarized in the individual's medical record (example: pathology slide and diagnostic films).
Disclose or Disclosure	The release, transfer, provision of access to, or divulging in any other manner PHI outside NJIT's HCCs. 45 C.F.R. 160.103. Exchange of PHI with a department of NJIT that is not designated as a HCC is considered a Disclosure, subject to HIPAA.

Direct Treatment Relationship	A treatment relationship between an individual and a HCC that is not an Indirect Treatment Relationship. 45 C.F.R. § 164.501.
Family Educational Rights and Privacy Act of 1974 (“FERPA”)	Federal legislation in the United States that protects the privacy of students' personally identifiable information. The act applies to all educational institutions that receive federal funds.
Fundraising	Organized activity by a private, non-profit or charitable entity designed to reach out to certain segments of the population and/or certified identified population in an attempt to raise monies for the University or for University specific projects or goals.
Health Care	Care, services, or supplies related to the health of an individual. Health Care includes, but is not limited to, the following: (a) 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 an individual or that affects the structure or function of the body; and (b) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription. 45 C.F.R. § 160.103.
Health Care Component	A component or combination of components designated by the NJIT, a Hybrid Entity. “HCCs” of the NJIT are outlined in the NJIT Hybrid Designation Policy. As “HCC” is used in NJIT’s Privacy Policies, it will include all of the constituent parts of a HCC (e.g. departments and clinics) that perform covered functions and NJIT Personnel providing Health Care services on behalf of the HCC, unless circumstances clearly indicate otherwise.
Health Oversight Agency	An agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the Health Care system (whether public or private) or government programs in which Health Information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which Health Information is relevant 45 C.F.R. § 164.501.
Hybrid Entity	A single legal entity that performs covered and non-covered functions as part of its business operations and has been identified HCCs within the entity. 45 C.F.R. § 164.504. (NJIT is a Hybrid Entity.)
Indirect Treatment Relationship	A relationship between an individual and a Health Care Provider in which: (a) the Health Care Provider delivers Health Care to the individual based on the orders of another Health Care Provider; and (b) the Health Care Provider typically provides services or products or reports the diagnosis or results associated with the Health Care directly to another Health Care Provider, who provides the services or products or reports to the individual. 45 C.F.R. § 164.501.
Individual	For purposes of this policy, individual refers to natural persons,

	employees and students whose PHI is created, received, maintained or electronically transmitted by HCCs.
Individually Identifiable Health Information	<p>Information that is a subset of Health Information, including demographic information collected from an individual, that is created or received by a Health Care Provider, health plan, employer, or health care clearinghouse; that relates to the past, present, or future physical or mental health or condition of an individual; the provision of Health Care to an individual; or the past, present, or future payment for the provision of Health Care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. 45 C.F.R. § 160.103.</p> <p>HIPAA excludes from health information employment records that NJIT maintains in its capacity as an employer, and education and certain other records subject to and defined by FERPA.</p>
Law Enforcement Official	<p>An officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe who is empowered by law to: (a) investigate or conduct an official inquiry into a potential violation of law; or (b) prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law. 45 C.F.R. § 164.103.Limited Data Set. Data set that includes elements such as dates of admission, discharge, birth and death as well as geographic information such as zip code and the individual's city, county or state, but which set excludes other elements that de-identify information. The limited data set can only be used if a HCC enters into a data use agreement with the data recipient.</p>
Marketing	<p>To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or services unless the communication is made: (a) to describe a health-related product or service (or payment for such product or service) that is provided by NJIT, including communications about the entities participating in a Health Care Provider network or health plan network and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits; (b) for Treatment of the individual; or (c) for case management or care coordination, contacting of individuals with information about treatment alternatives and related functions provided that these activities do not fall within the definition of treatment.</p>
Minimum Necessary	<p>The least amount of PHI needed to achieve the intended purpose of the use or disclosure. NJIT HCCs are required to limit the amount of PHI it uses, discloses or requests to the minimum necessary to accomplish the purpose.</p>

NJIT	New Jersey Institute of Technology, including its officers, employees and agents when the context clearly intends such.
NJIT Personnel	Faculty, staff, volunteers, student-employees and other trainees, and other persons whose conduct, in the performance of work for NJIT, is under the direct control of NJIT, whether or not they are paid by NJIT. 45 C.F.R. §160.103.
Organized Health Care Arrangement	A clinically integrated care setting in which the individuals typically receive Health Care from more than one Health Care Provider. 45 C.F.R. § 164.501.
Payment	Activities of an NJIT HCC to obtain payment for providing Health Care. Such activities relate to the individual to whom Health Care is provided and include, but are not limited to: (a) billing, claims management, collection activities, and related Health Care data processing; and (b) Disclosure to consumer reporting agencies of any of the following PHI relating to collection of premiums or reimbursement: (i) name and address; (ii) date of birth; (iii) Social Security number; (iv) payment history; (v) account number; and (vi) name and address of the Health Care Provider. 45 C.F.R. §164.501.
Personal Representative	An individual with the legal authority to act on behalf of an incapacitated and/or incompetent adult, a minor, or a deceased individual or the individual's estate in making health care decisions or in exercising the individual's rights related to the individual's PHI.
Privacy Regulations	The regulations issued by the Department of Health and Human Services implementing the privacy requirements of the Health Insurance Portability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, aimed at protecting an individual's right to privacy in matters involving his or her Health Care.
Protected Health Information ("PHI")	Protected Health Information or electronic Protected Health Information. Individually identifiable health information that is transmitted by, or maintained in, electronic media or any other form or medium. This information must relate to (1) the past, present, or future physical or mental health, or condition of an individual; (2) provision of health care to an individual; or (3) payment for the provision of health care to an individual. If the information identifies or provides a reasonable basis to believe it can be used to identify an individual, it is considered individual identifiable health information. PHI excludes "Identifiable" Health Information in: (a) education records covered by the Family Educational Rights and Privacy Act (FERPA); and (b) employment records held by NJIT in its role as employer.
Psychotherapy Notes	Notes recorded in any medium by a Health Care Provider who is a mental health provider documenting or analyzing 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 sessions 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. 45 C.F.R § 164.501.
Public Health Authority	An agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate. 45 C.F.R. §164.501.
Required by Law	A mandate contained in law that compels NJIT to make a Use or Disclosure of PHI and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, governmental or tribal inspector general, or administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to Health Care Providers participating in the program; and statutes or regulations that require the production of information, including those that require such information if payment is sought under a government program providing public benefits. 45 C.F.R. § 164.501.
Research	A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. 45 C.F.R § 164.501.
Telemedicine Technology	The use of medical information exchanged from one site to another via electronic communications to improve an individual's clinical health status. Telemedicine includes applications and services using two-way video, email, smart phones, wireless tools and other forms of telecommunications technology.
Treatment	The provision, coordination, or management of Health Care and related services by NJIT HCCs Personnel. 45 C.F.R 164.501. Treatment includes: (a) the coordination or management of Health Care by an NJIT HCC with a third party; (b) consultation with other Health Care Providers relating to an individual; or (c) the referral of an individual for Health Care between an NJIT HCC and another Health Care Provider.
Use	The sharing, employment, application, utilization, examination, or analysis of individually identifiable health information within NJIT HCCs. 45 C.F.R. § 164.501.

## **D. PERSONAL REPRESENTATIVES**

An HCC must, except in the limited circumstances as set forth in this policy, treat a Personal Representative the same as the individual with respect to uses and disclosures and exercising the rights under HIPAA.

HIPAA provides an exception to this when an HCC has a reasonable belief that the personal representative may be abusing or neglecting the individual, or that treating the person as the personal representative could otherwise endanger the individual.

### **1. Individual Adult Representatives**

Adult individuals may act as personal representatives of another provided there is an executed Durable Power of Attorney for Health Care.

Durable Power of Attorney for Health Care. A legal document appointing another to make certain health care decisions for an individual in the event that individual is unable to make decisions. The durable power of attorney for health care does not give the power to execute an advance directive for health care, living will, or other document to authorize life-sustaining treatment decisions or to make life-sustaining treatment decisions unless the power of attorney complies with the requirements of a Health Care Proxy.

- (a) A valid Durable Power of Attorney must be in writing and contain the words “This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time,” or “This power of attorney shall become effective upon disability or incapacity of the principal,” or similar words showing the intent of the principal that the authority conferred will be exercisable notwithstanding the principal’s subsequent disability or incapacity. The document should state whether NJIT Personnel may rely on the power of attorney while individual is still competent or whether it is effective only once the individual becomes incompetent.
- (b) The individual may revoke the power of attorney at any time if competent. Death of the individual will revoke and terminate the power of attorney.

### **2. Health Care Proxy**

A Health Care Proxy is an adult person appointed by an individual to make health care decisions, including but not limited to withholding or withdrawing life-sustaining treatment, in certain circumstances pursuant to an advanced directive for health care decision. A Health Care Proxy’s authority becomes effective only (a) when the individual is incompetent and (b) has been diagnosed with a terminal condition or is persistently unconscious.

The appointment of the Health Care Proxy may be completely or partially revoked at any time and in any manner by the individual. A revocation is effective upon communication of the desire to revoke to appropriate NJIT Personnel.

### **3. Court-Appointed Guardian**

A person appointed by a court of competent jurisdiction who has legal authority over the care and management of the person, estate, or both, of an individual who cannot act for himself.

### **4. Minors**

Medical Treatment. For minor individuals (under the age of 18) who do not fall within one of the exceptions listed below, either parent, the legal guardian, or the legal custodian appointed by a court of competent jurisdiction may act as a minor's Personal Representative.

Exceptions:

- (a) Any minor who is married, has a dependent child, or is emancipated.
- (b) Any minor who is separated from his/her parents or legal guardian and is not supported by them.
- (c) Any minor who is or has been pregnant or afflicted with any reportable communicable disease, drug and substance abuse, or abusive use of alcohol, but only if the minor is seeking treatment, diagnosis, or prevention services related to such conditions. If the minor is found to be pregnant or suffering from a communicable disease, drug or substance abuse, or abusive use of alcohol, NJIT Personnel shall not reveal any information to the spouse, parent, or Personal Representative of the minor without the minor's consent.
- (d) Any minor as to his/her minor child.
- (e) The spouse of a minor if the minor is incapable of consenting because of physical or mental incapacity.
- (f) Any minor who by reason of physical or mental capacity cannot give consent and has no known relatives or legal guardian, if two physicians agree on the health service to be provided.
- (g) Any minor in need of emergency services for conditions that will endanger his health or life if delay would result by obtaining consent from his spouse, parent, or legal guardian; provided, however, that the prescribing of any medicine or device for the prevention of pregnancy shall not be considered such an emergency service.
- (h) Information regarding who may consent for minors to participate in Research and under what circumstances may be obtained from the NJIT's IRB or Office of General Counsel.

If any minor falsely represents that he may give consent and a health professional provides health services in good faith based upon that misrepresentation, the minor

shall receive full services without the consent of the minor's parent or legal guardian and the health professional shall incur no liability except for negligence or intentional harm.

Except as set forth herein, NJIT Personnel are required to make a reasonable attempt to inform the spouse, parent, or guardian of the minor of any emergency services provided to the categories of minors set forth above. In all other instances, NJIT personnel may, but are not required to, inform the spouse, parent, or legal guardian of the minor of any treatment provided.

## **5. Deceased Individuals**

If under applicable law, there is an executor, administrator, or other person having authority to act on behalf of a deceased individual or of the individual's estate, that individual must be treated as the Personal Representative of the deceased, with respect to PHI. The court document appointing the individual as an executor or administrator is known as the Letters Testamentary or Letters of Administration and should be signed by a judge. Under New Jersey Law, the following individuals have authority to act as a Personal Representative if there is no executor or administrator appointed: the spouse of the deceased or, if no spouse, any responsible family member of the deceased. A responsible family member is a parent, adult child, adult sibling, or other adult relative of the deceased who was actively involved in providing or monitoring the care of the deceased, as verified by the doctor, hospital, or other medical institute that was responsible for providing care and treatment of the deceased.

NJIT must comply with HIPAA with respect to the PHI of deceased individuals for a period of 50 years following the death of the individual.

## **6. Procedures**

Prior to NJIT personnel acknowledging an individual as a Personal Representative, a Durable Power of Attorney for Health Care and/or a Health Care Proxy for the individual must be obtained and reviewed to ensure the Personal Representative's authority is not limited in scope or time and to ensure it meets the requirements described above. NJIT personnel also must verify the identity of the Personal Representative.

A copy of the Durable Power of Attorney for Health Care and/or the Health Care Proxy appointing a person as the Personal Representative of a individual should be placed in the individual's medical record as verification of the individual's authority.

Any questions regarding the validity of a document purporting to confer Personal Representative status must be directed to the Office of General Counsel.

**E. VERIFICATION OF IDENTITY FOR USE AND DISCLOSURE OF PHI**

Prior to making a Disclosure or processing an individual request permitted by this policy, unless otherwise stated, NJIT personnel must: (i) verify the identity of a person requesting PHI and the authority of any such person to have access to PHI, if the identity or any such authority of such person is not known to NJIT personnel; and (ii) obtain any documentation, statements, or representations, whether verbal or written, from the person requesting the PHI when such documentation, statement, or representation is a condition of the Disclosure or processing.

To verify identity, NJIT personnel may rely on:

1. An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law provided that the information sought is relevant and material to a legitimate Law Enforcement inquiry, the request is specific and limited in scope, and de-identified information could not reasonably be used.
2. Appropriately executed documentation of an IRB or Privacy Board waiver or alteration of the Authorization requirement.
3. A request by an authorized public official upon presentation of his/her badge or other official credentials if in person or the appropriate letterhead if the request is made in writing. Authority may be verified by written statement or legal process, warrant, subpoena, order, or other legal process.
4. Personal judgment if a Disclosure is being made solely to avert a serious threat to health or safety or in cases when an individual is required to be given an opportunity to agree or object to the Disclosure.
5. Verification of identity can be accomplished by: (a) review of picture I.D.; (b) signature comparison; or (c) other appropriate method. Determination of whether the individual is authorized to obtain PHI is still required.

Any questions regarding verification of or reliance on identity or authority should be directed to the Office of General Counsel or the NJIT Privacy Official. The Office of General Counsel or the NJIT Privacy Official should be contacted prior to responding to any request by Law Enforcement Officials.

**F. NOTICE OF PRIVACY PRACTICES (“NPP”)**

NJIT HCCs will provide a Notice of Privacy Practices to individuals that includes the information required by the HIPAA Privacy Regulations. An individual’s receipt of the Notice of Privacy Practices must be acknowledged as required by the Privacy Regulations. If written acknowledgement cannot be obtained from the individual reasons why and efforts taken to obtain a written acknowledgement will be documented.

The Notice of Privacy Practices shall be available in Spanish. Each HCC shall have the Notice translated into other languages based on its individual population as required by HIPAA regulations.

NJIT personnel may not use or disclose PHI in a manner inconsistent with the NJIT's Notice of Privacy Practices.

## **1. Procedures**

### **(a) Acknowledgement**

A Notice of Privacy Practices must be provided to each individual at the first appointment for services within a HCC. The individual will be asked to sign the Acknowledgment of Receipt of Notice of Privacy Practices at this time. NJIT personnel will make reasonable attempts to have the individual sign for receipt of the NPP; however, if written acknowledgement cannot be obtained from the individual reasons why and efforts taken to obtain a written acknowledgement will be documented and filed in the individual's record.

### **(b) Distribution**

NJIT HCCs must make the Notice of Privacy Practices available to any person who requests it. HCCs with direct treatment relationship with individuals must:

- (i) Provide the Notice of Privacy Practices to each individual no later than the date of the first service delivery, including service delivered electronically. If the first service delivery to an individual is delivered electronically, the individual must be provided with an electronic copy of the Notice of Privacy Practices automatically and contemporaneously in response to the individual's first request for service.
- (ii) Make the Notice of Privacy Practices available at the service delivery site upon request (Example: Student Health Services Site and Athletic Department). During emergency treatment situations, the Notice of Privacy Practices may be provided and the Acknowledgement obtained as soon as reasonably practicable after the emergency is resolved.
- (iii) Post the Notice of Privacy Practices in a clear and prominent location where it is reasonable to expect individuals seeking service from the Health Care Provider to be able to read it. In addition, the NPP for the HCCs shall be posted on the web sites of the Health Services Center, Student Services, and the Department of Human Resources. Any College, department, or clinic that maintains its own web site also shall post the NPP on its web site or include a link to the NPP on the HIPAA webpage.

The Notice may be distributed by e-mail if the individual agrees to the electronic notice and the agreement has not been withdrawn. All timing requirements for distribution of the Notice of Privacy Practices (NPP) apply to electronic notices. If NJIT Personnel know that if the electronic transmission has failed, a hard copy must be provided. When electronic notice is provided, an Acknowledgement of Receipt of NPP still must be obtained.

HCCs with indirect treatment relationships with individuals must provide the Notice of Privacy Practices to individuals upon request.

**(c) Amendment**

If the Notice of Privacy Practices is amended, the amended version must be posted and distributed to new individuals. It also must be made available upon request to current individuals.

**(d) Retention**

The Notice of Privacy Practices must be retained by the Privacy Official for six years.

**G. INDIVIDUAL ACCESS TO PROTECTED HEALTH INFORMATION**

**1. Right to Access**

- (a) NJIT will permit individuals to inspect and/or obtain a copy of their PHI that is included in a designated record set and maintained by a HCC, for as long as the PHI is maintained in the Designated Record Set. If a Designated Record Set is maintained in more than one location, NJIT must produce all information requested. All requests for access must be done so through completion of the Request to Access PHI Form.
- (b) Unless an exception applies, an individual should be granted access to the entire medical record, including records received from other providers that were used to make treatment decisions.
- (c) NJIT may charge a fee for access to PHI. The fee must be consistent with state and federal law.
- (d) NJIT must provide the individual with access to PHI in the form or format requested by the individual, if it is readily producible in such form or format; or, if not, in a readable hard copy form or other form or format as agreed to by NJIT and the individual. If the PHI is maintained in an electronic health record, NJIT must provide the individual with a copy of the PHI in electronic format, upon request.

- (e) NJIT must arrange with the individual for a convenient time and place to inspect or obtain a copy of the PHI or mail a copy of the information at the individual's request. A HCC may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access.

If NJIT does not maintain the PHI that is the subject of the individual's request for access and NJIT Personnel know where the requested information is maintained, NJIT must inform the individual where to direct the request for access.

## **2. Psychotherapy Notes**

An individual does not have the right to access Psychotherapy Notes relating to him/her except (a) to the extent the individual's treating professional approves such access in writing; or (b) the individual obtains a court order authorizing such access.

## **3. Denial of Right to Access**

An individual may be denied access to PHI under the limited circumstances listed below.

- (a) Legal Information. NJIT may deny an individual access to information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding. The Office of General Counsel should be consulted prior to denying an individual's request for access on this basis.
- (b) Research. NJIT may temporarily suspend an individual's access to PHI created or obtained in the course of Research that includes Treatment. The suspension may last for as long as the Research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the Research and the individual has been informed that the right of access will be reinstated upon completion of the Research.
- (c) Information from Other Source. NJIT may deny an individual's access to PHI if the information was obtained from someone other than an NJIT HCC under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.
- (d) Endangerment. NJIT may deny an individual access to PHI in the event a licensed Health Care Professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person. Access may not be denied on the basis of the sensitivity of the health information or the potential for causing emotion or psychological harm.

- (e) Reference to Other People. NJIT may deny an individual access to PHI if it makes reference to another person and a licensed Health Care Professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial physical, emotional or psychological harm to such other person.
- (f) Personal Representative. NJIT may deny access to PHI if the request is made by an individual's Personal Representative and a licensed Health Care Professional has determined, in the exercise of professional judgment, that the provision of access to such Personal Representative is reasonably likely to cause substantial harm to the individual or another person.

#### **4. Review of Denied Access**

If access to PHI is denied for the reasons set forth above, the individual must be given the opportunity to have the denial reviewed by a licensed Health Care Professional in the NJIT HCC that received the request or some other appropriate person designated by the HCC. The Reviewer cannot have participated in the original denial. The Denial of Individual's Request for PHI form must be used to ensure this information is provided to the individual.

#### **5. Procedures**

##### **(a) Right to Access**

- (i) All individuals must make their requests for access in writing using NJIT's Request for Individual's Health Information form. Individuals making their request for access by telephone or e-mail should be sent a copy of the form or referred to the NJIT's HIPAA forms webpage. Verification of the requester's identity must be obtained prior to granting access to the PHI. The form must be maintained in the individual's medical record for a minimum of six (6) years.
- (ii) If an individual indicates on the form that he/she has been treated by more than one HCC, the HCC that received the request should immediately forward a copy of the request to the NJIT Privacy Official who will coordinate the processing of the request with the other HCCs designated by the individual. If the individual does not request access from any other HCCs, the HCC that received the initial request should process the request in accordance with its internal procedures and maintain a copy of the form in the individual's medical record. A copy of the "Denial form", if applicable, should also be filed in the individual's medical record and, upon request, sent to the Privacy Official.
- (iii) An individual's request for access to PHI must be acted upon as soon as reasonably possible, but in no event more than thirty (30) calendar days

after receiving the request. No extensions are permitted without prior approval of the NJIT Privacy Official, who may approve an additional 30 days in compliance with the law.

- (iv) Each HCC must designate and document the titles of persons or offices responsible for receiving and processing requests for access to PHI. A copy of the designations must be provided to the NJIT Privacy Official. The HCCs must update the list as changes are made and provide an updated list to the NJIT Privacy Official, who will maintain a copy of the designations for a minimum of six (6) years.
- (v) Any questions regarding an individual's right of access should be forwarded to the NJIT Privacy Official.

**(b) Denial of Right to Access**

- (i) If an individual's request for access to PHI is denied, the individual must be provided with a written denial using the NJIT's "Denial of Request for PHI" form (Insert Link to form). The form must be maintained in the individual's medical record for a minimum of six (6) years. The copy forwarded to the Privacy Official also should be maintained for six (6) years.

**(c) Review of Denied Access**

- (i) HCCs are required to promptly forward requests for review of denial to a Reviewer identified by the NJIT Privacy Official, and the Reviewer is required to review the denial within a reasonable period of time, but no later than thirty (30) days after receiving the request for review. Access to PHI must be provided to the individual in accordance with the determination of the Reviewer. The individual making the request should be notified promptly, in writing, of the Reviewer's decision, a copy of which must be filed in the individual's medical record and sent to the NJIT Privacy Official.

**H. ACCOUNTING OF DISCLOSURES**

**1. Accounting of Disclosures**

NJIT HCC will keep an accounting of disclosures made of individuals' PHI. Individuals have the right to request and receive an accounting of disclosures made concerning their PHI by the HCCs of NJIT, except as outlined below. The accounting will include Disclosures made by a HCC for the time period requested by the individual, but limited to six (6) years prior to the date of the

request, including Disclosures to or by Business Associates, with the following exceptions:

- (a) Disclosures to carry out Treatment, Payment, or Health Care Operations;
- (b) Disclosures to individuals of PHI about them;
- (c) Disclosures incident to a Use or Disclosure otherwise permitted or required by the Privacy Regulations;
- (d) Disclosures pursuant to the individual's Authorization
- (e) Disclosures for a Facility Directory, to persons involved in the individual's care, or to notify or assist in the notification of a family member, Personal Representative, or other responsible for the care of the individual of the individual's location, general condition, or death;
- (f) Disclosures for national security or intelligence purposes;
- (g) Disclosures to Correctional Institutions or Law Enforcement officials to provide them with information about a person in their custody;
- (h) Disclosures as part of a limited data set; or
- (i) Disclosures that occurred prior to April 15, 2003.
- (j) Examples of Disclosures subject to the accounting requirement include but are not limited to Disclosures for, or pursuant to: (i) Research, unless, authorized by individual; (ii) subpoenas, court orders, or discovery requests; (iii) abuse and/or neglect reporting; (iv) communicable disease reporting; or (5) other reports to the Department of Health.

## **2. Accounting Requirement – Research Involving More than Fifty Participants**

If a HCC had made Disclosures of PHI for a particular Research purpose for fifty (50) or more individuals and where an individual authorization was required, the accounting may provide:

- (a) The name of the protocol or other;
- (b) A description, in plain language, of the Research protocol or Research activity, including the purpose of the Research and the criteria for selecting particular records;

- (c) A brief description of the type of PHI that was disclosed, including the date or period of time during which the disclosures occurred, including the date of the last disclosure;
- (d) The name, address, and telephone number of the research sponsor and of the researcher; and
- (e) A statement that the PHI of the individual may or may not have been disclosed for a particular research protocol or research activity.

If a HCC provides an accounting of Research Disclosures and if it is reasonably likely that the PHI of the individual requesting the accounting was disclosed for such Research, the HCC shall, at the request of the individual, assist in contacting the research sponsor and the researcher.

### **3. Suspension of Accounting**

A Health Oversight Agency or Law Enforcement Official may request, either written or orally, that an NJIT HCC suspend an individual's right to receive an accounting of disclosures made to that agency or official. If a HCC receives a request to suspend an individual's right to receive an accounting, the Office of General Counsel or NJIT Privacy Official should be contacted to determine if the appropriate conditions have been satisfied.

#### **(a) Suspension Request – Written**

A written statement from the Health Care Agency or Law Enforcement Official requesting a suspension of accounting disclosures must include a statement that the accounting of disclosures made to the respective agency or official would be reasonably likely to impede official activities and the length of time required for the suspension.

If during a suspension period NJIT HCCs receive a request for an accounting of disclosures, NJIT HCCs must create an accounting for the individual, excluding any disclosures made to the Health Care Agency or Law Enforcement Official.

#### **(b) Suspension Request – Verbal**

If a Health Care Agency or Law Enforcement Official contacts an NJIT HCC and orally requests that a suspension be put into place stating that there is insufficient time to prepare a written statement, the HCC shall contact the Office of General Counsel for guidance.

If the verbal request for suspension is granted, after thirty (30) days NJIT HCC must record the disclosure(s) made to the agency or official in the accounting

database, unless the Health Care Agency or Law Enforcement Official requested in writing a further suspension.

#### **4. Procedures**

- (a) An individual must request an accounting of Disclosures in writing using the Request for Accounting of Disclosure form. Verification of the requester's identity must be obtained prior to granting the request for an accounting. Individuals making their request for an accounting by telephone or e-mail should be forwarded a copy of the form or referred to the HIPAA forms webpage. The request form must be maintained in the individual's medical record for a minimum of six (6) years.
- (b) If an individual indicates that he/she has been treated by more than one HCC, the HCC that received the request should immediately forward a copy of the request to the NJIT Privacy Official, who will coordinate the processing of the request with the other NJIT HCCs designated by the individual. If the individual does not request an accounting from any other HCCs, the HCC that received the initial request should process the request in accordance with its internal procedures and send a copy of the request form and a copy of the accounting of Disclosure log to the NJIT Privacy Official, upon request.
- (c) HCCs will have a designated individual who will be responsible for processing requests for accountings of Disclosures. A listing of all such designated individuals will be maintained by the NJIT Privacy Official.
- (d) For each Disclosure that must be recorded, the accounting log must include the following information:
  - (i) The date of the Disclosure;
  - (ii) The name and the address to whom the disclosure was made;
  - (iii) A brief description of the PHI that was Disclosed; and
  - (iv) A brief statement of the purpose of the Disclosure that reasonably informs the individual of the basis for the Disclosure; or a copy of the written request for the Disclosure, if approved by the NJIT Privacy Official.
- (e) An Accounting of Disclosure log must be used to record Disclosures and must be maintained in an individual's medical record for a period of at least six (6) years from that date of the last accounting.

- (f) The Request for Accounting of Disclosures form and the log forwarded to the Privacy Official also should be maintained for six (6) years.
- (g) If during the period covered by the accounting, a HCC has made multiple Disclosures of PHI to the same requestor for a single purpose, or pursuant to a single Authorization, the accounting may provide:
  - (i) The information set forth above for the first Disclosure during the accounting period;
  - (ii) The frequency, periodicity, or number of the Disclosures made during the accounting period; and
  - (iii) The date of the last such Disclosure during the accounting period.
- (h) If during the period covered by the accounting the HCC has used a Business Associate, the HCC must contact the Business Associate to obtain an Accounting of Disclosures made by the Business Associate. This accounting must also be provided to the individual.
- (i) The HCC will act on the individual's request for an accounting no later than sixty (60) calendar days after receipt of such a request. If the HCC is unable to meet this deadline, it must contact the NJIT Privacy Official to request an extension, which may not exceed thirty (30) calendar days. The NJIT Privacy Official will be responsible for contacting the individual regarding any necessary extension.
- (j) The first accounting to an individual in any twelve-month period must be provided at no charge. NJIT may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the twelve-month period, provided that the NJIT informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

**5. Reasonable Cost Based fees include:**

- (a) Costs for copying, including the cost for supplies and for labor of copying;
- (b) Postage costs, if the individual has requested that the information be mailed; and
- (c) Costs for preparing an explanation or summary of the PHI, only if agreed to by the individual, and wherein the individual requested a summary or explanation instead of records.

## **I. COMMUNICATION BY ALTERNATIVE MEANS**

1. Individuals may request, and NJIT HCCs will accommodate reasonable requests individuals, to receive communications of PHI by alternative means or at alternative locations. If a request for communication by alternative means is granted, HCCs of NJIT must communicate with the individual in accordance with the granted request. If requests made to HCCs are unreasonable, the alternative communication requests may be denied.
  - (a) NJIT cannot require an explanation from the individual as to the basis for the request as a condition of considering or granting the request.
  - (b) NJIT can condition the provision of an alternative means of communication on receiving: (i) information as to how payment will be handled, if applicable and (ii) the specification of an alternative address or other method of contact.

### **2. Procedures**

- (a) An individual must request communication by alternative means or at alternative locations in writing by using the Request for Communication by Alternative Means form.
- (b) If an individual indicates that he/she has been treated by more than one HCC and wants the request to apply those HCCs as well, the HCC that received the request should immediately forward a copy of the request to the NJIT Privacy Official, who will coordinate the processing of the request with the other NJIT HCCs designated by the individual, and Business Associates.

If the individual does not request an alternative means of communication from any other HCCs, the HCC that received the initial request should process the request in accordance with its internal procedures and send a copy of the Request form and the "Denial form, if applicable, to the NJIT Privacy Official.

- (c) HCCs must designate an individual or individuals who will be responsible for determining if a particular request for alternative means of communication is reasonable in light of any expense and administrative burden involved with complying with the request. Questions regarding the reasonableness of a particular request should be discussed with the NJIT Privacy Official.
- (d) If a denial for an alternative means of communication has been made, the individual will be notified of the denial and the reason for such denial. In order to protect the individual, a written denial form should be sent to the alternate address for this communication only. Denials can relate to the entire request or be limited to sections of the request.
- (e) Requests for alternative means of communication and documentation of any denials of such requests should be maintained in an individual's medical record for a minimum of six (6) years.

- (f) If a request for communication by alternative means is granted, a HCC must place a clear indication of the alternative communication by means on or in the individual's medical record, to ensure the alternative means is observed.

## **J. RIGHT TO AMEND RECORDS**

### **1. Right to Amend Records**

Individuals have the right to request amendments to their PHI contained in a Designated Record Set. The amendment to PHI will always be in the form of information added to the existing PHI. The amendment may contain items that substantially change the initial PHI, change sections of PHI to make it more precise, or demonstrate that any part of the original PHI is inaccurate. Original PHI shall remain unaltered.

NJIT HCCs may deny an individual's request for amendment if it determines that the PHI or record that is the subject of the request:

- (a) Was not created by NJIT personnel, unless the individual provides a reasonable basis to believe that the originator of PHI is no longer available to act on the requested amendment;
- (b) Is not part of the Designated Record Set;
- (c) Is not available for inspection by the individual; or
- (d) Is accurate and complete.

### **2. Procedures**

- (a) Individuals must request amendments to their PHI in writing by using NJIT's Request for Amendment of PHI form. Verification of the requester's identity must be obtained prior to considering the amendment request. The request form must be maintained in the individual's medical record for a minimum of six (6) years.
- (b) If an individual indicates on the form that he/she has been treated by more than one HCC and the requested amendment affects those other HCCs, the HCC that received the request should immediately forward a copy of the request to the NJIT Privacy Official, who will coordinate the processing of the request with the other NJIT HCCs designated by the individual and any Business Associates. If the individual does not request an amendment from any other HCC, the HCC that received the initial request should process the request in accordance with its internal policy and file a copy of the request in the individual's medical record.
- (c) HCCs should designate an individual or individuals who will be responsible for processing a particular amendment request. The specific provider responsible for recording the PHI or originating the record must be consulted, if possible, and should sign the amendment form.

- (d) HCCs must act on the individual's request no later than sixty (60) calendar days after receipt of a request, as set forth below:
- (i) Accepting the Amendment. If the HCC accepts the requested amendment, in whole or in part, the HCC must: (1) make the appropriate amendment by identifying the records in the Designated Record Set that are affected by the amendment, but retain the original records in the set (2) inform the individual, in writing, that the amendment is accepted/denied by sending the individual a copy of the Request for Amendment Acceptance/Denial form with the acceptance noted; (3) obtain the individual's identification of an agreement to have the HCC notify the relevant persons with whom the amendment needs to be shared (use the Request form); and (4) make reasonable efforts to provide the amendment within a reasonable time to persons identified by the individual as having received PHI about the individual and needing the amendment, and persons as well as Business Associates that the HCC knows have the PHI that is the subject of the amendment and who may have relied, or could foreseeably rely, on such information to the detriment of the individual.
  - (ii) Denying the Amendment. If the HCC denies the requested amendment, in whole or in part, the HCC must: (1) inform the individual, in writing, that the amendment is denied by sending the individual a copy of the Request for Amendment Acceptance/Denial form; (2) permit the individual to submit to the HCC a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement; (3) identify, as appropriate, the record or PHI in the Designated Record Set that is the subject of the disputed amendment and append the individual's request for an amendment; the Health Care Component's denial of the request; the individual's statement of disagreement, if any; and the HCC's rebuttal, if any, to the Designated Record Set. The NJIT Privacy Official must be contacted prior to sending the rebuttal.
- (e) A HCC that is informed by another Covered Entity of an amendment to an individual's PHI must notify the NJIT Privacy Official and take appropriate action, including amending the PHI in its Designated Record Sets.
- (f) Requests for amendments and documentation of the response to such requests must be maintained in an individual's medical record for a minimum of six (6) years.

**K. RIGHT TO REQUEST RESTRICTION ON USE AND DISCLOSURES**

1. Individuals have the right to request restrictions on the Use and Disclosure of their PHI. However, NJIT is not required to agree to any request to restrict the Use and Disclosure of PHI.

2. Individual requests for restrictions will be accepted by NJIT HCCs when the following conditions are met:
  - (a) HCCs have been paid out of pocket in full for the health care items; and
  - (b) The requested restriction is limited to disclosures to a health care plan for carrying out payment or health care operations; and
  - (c) The requested restriction is limited to disclosures of PHI solely related to that health care item or service; and
  - (d) NJIT HCCs have administrative, physical and technical capability to comply with the restriction; and
  - (e) An individual's care will not be detrimentally affected; and
  - (f) NJIT HCCs believe that the individual is in danger or a public figure whose identity at NJIT, if known, could be disruptive.
1. If NJIT agrees to a restriction, it may not Use or Disclose PHI in violation of the restriction. However, NJIT may terminate the restriction agreement if:
  - (a) The individual agrees to or requests the termination of the restriction in writing; or
  - (b) The individual verbally agrees to the termination of the restriction and the HCC documents the oral agreement; and
  - (c) The HCC informs the individual of the termination, in which case the termination will only be effective for PHI created or received after the individual is so informed.
2. Restrictions will not prohibit:
  - (a) Disclosures that are necessary to provide the individual with emergency treatment;
  - (b) Disclosures to Health and Human Services ("HHS") for purposes of determining compliance with HIPAA;
  - (c) Disclosures for a facility directory; or
  - (d) Disclosures for which an authorization is not required.
3. Procedures
  - (a) Individuals must request restrictions on the Use and Disclosure of their PHI in writing by using the Request for Restriction on Use and Disclosures of PHI

form. Verification of the requester's identity must be obtained prior to considering the request.

- (b) If an individual indicates on the form that he/she has been treated by more than one HCC and wants the restriction to apply to those HCCs, the HCC that received the request should immediately forward a copy of the request to the NJIT Privacy Official, who will coordinate the processing of the request with the other HCCs designated by the individual and Business Associates. If the individual does not request a restriction on the use of PHI created or maintained by any other HCCs, the HCC that received the initial request should process the request in accordance with its internal procedures and file a copy of the request form in the individual's medical record.
- (c) HCCs must designate an individual or individuals who will be responsible for determining if a particular restriction will be permitted.
- (d) The Privacy Official should be contacted prior to agreeing to any restriction request.
- (e) HCCs must notify the individual in writing if the request is denied by providing the individual with a copy of the completed "Request for Restriction form" that includes the reason for the denial.
- (f) Requests for restrictions and documentation of approvals or denials of such requests shall be maintained in an individual's medical record for a minimum of six (6) years.
- (g) The agreed-upon restrictions on the Use and Disclosure of PHI should be communicated to the billing department and other departments, providers, and Business Associates who may be using or disclosing the individual's PHI on behalf of the NJIT and/or HCC that agreed to the request. HCCs must send those departments and entities a copy of the approved "Request Form."
- (h) A restriction on the Use and Disclosure of PHI that is not Required by Law can be terminated if (i) the individual requests the termination in writing; (ii) the individual verbally agrees to or requests the termination and the verbal request or agreement is documented in the individual's medical record and communicated in writing to the Privacy Official; or (iii) the NJIT and/or the HCC informs the individual that it is terminating its agreement to the voluntary restriction, in which case the termination will apply only to PHI created or received after the individual has been notified of the termination. The Revocation of Request for Restriction and "Use and Disclosure of PHI form," may be used.
- (i) If a restriction request is granted, a HCC must place a clear indication of the restriction on or in the individual's medical record, to ensure the restricted information is not inadvertently made available.

**L. PRIVACY OFFICIAL**

1. Designated Point of Contact

The Privacy Official shall be the designated point of contact for all HIPAA related issues, and whose position includes training and privacy compliance. The Privacy Official also will be responsible for receiving and managing the investigation of complaints regarding HIPAA.

2. Procedures

- (a) Documentation regarding the designation of the Privacy Official and his/her contact information must be retained, in written or electronic format, for at least six (6) years by the NJIT Privacy Official.
- (b) The contact information for the NJIT Privacy Official is set forth on NJIT's Human Resources website and will be revised in the event a new NJIT Privacy Official is designated or the contact information changes.

**M. PRIVACY COMPLAINT REPORTING AND TRACKING**

1. All incidents regarding the alleged failure to comply with NJIT's HIPAA Policy and compliance with such Policies, regardless of the form in which they are reported, will be documented, reviewed, and acted upon, if necessary, by the NJIT's Privacy Official or designee. Complaints may be reported on the NJIT's HIPAA Privacy Complaint form. Documentation regarding incident reports received and the resolution of such complaints will be retained, in written or electronic format, for at least six (6) years.

2. Procedures

- (a) Each HCC shall designate an individual responsible for receiving and managing Privacy incidents involving the HCC.
- (b) All complaints received by HCCs must immediately be reported to the NJIT Privacy Official. Such process can be as simple as notifying individuals that reporting a Privacy-related incident should be to contact the NJIT's Privacy Official or the HCC designee.
- (c) The NJIT Privacy Official or designee will record, conduct and/or track the investigation and response to each report and can participate in the resolution.
- (d) The NJIT Privacy Official will be responsible for the investigation of each report, in coordination with or through the appropriate HCC and, if necessary, with other affiliated NJIT departments.

- (e) The NJIT Privacy Official shall maintain a record of each Privacy incident, the investigation, and the resolution.

**N. DOCUMENTATION**

1. NJIT and each HCC, as appropriate, will maintain, for at least six (6) years, the following:

- (a) Written or electronic copies of its Privacy Policies;
- (b) Written or electronic copies of any communication that is required by the Privacy Regulations to be in writing; and
- (c) Written or electronic records of any action, activity, or designation that is required by the Privacy Regulations to be documented.

2. Procedures

- (a) Documentation of Privacy Policies. Written or electronic copies of NJIT's Privacy Policies will be maintained by the NJIT Privacy Official for at least six (6) years from the date the Policies were created or were last in effect, whichever is later.
- (b) Documentation of Communications Required by the Privacy Regulations. This documentation will be retained for a period of at least six (6) years from the date of creation as specified in the related Privacy Policy.
- (c) Documentation of Any Action, Activity, or Designation Required by Privacy Regulations. This documentation will be retained for a period of at least six (6) years from the date of creation as specified in the related Privacy Policy.

**O. RETALIATION AND INTIMIDATION**

1. Neither NJIT, NJIT personnel, nor NJIT Business Associates shall not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against an individual for:

- (a) Exercising any right under, or for participating in, any process established by the Privacy Regulations;
- (b) Filing a complaint with the Secretary of the Department of Health and Human Services as permitted by the Privacy Regulations;

- (c) Testifying, assisting, or participating in an investigation, compliance audit or review, proceeding, or hearing conducted by NJIT or a government enforcement agency under the Privacy Regulations; or
- (d) Opposing any act or practice made unlawful by the Privacy Regulations, provided the individual has a good faith belief that the practice opposed is unlawful and the manner of the opposition is reasonable and does not involve a Disclosure of PHI in violation of the Privacy Regulations or the NJIT's Privacy Policies.

2. Procedures

- (a) Any individual who believes that he/she is enduring some form of retaliation or intimidation for exercising his/her rights under the Privacy Regulations should report the incident to NJIT's Privacy Official.
- (b) If NJIT's Privacy Official receives a report of retaliation or intimidation, then NJIT's Privacy Official will conduct an investigation to determine if retaliation or intimidation has occurred. If the report is substantiated, sanctions will be imposed in accordance with NJIT employment policies and procedures.

**P. MITIGATION**

1. NJIT will mitigate, to the extent practicable, unpermitted uses and disclosures of, and unpermitted access to, PHI in violation of HIPAA Privacy Regulations.

2. Procedures

- (a) The type of mitigation that occurs will be based on the facts and circumstances of each case, based on the following factors:
  - (i) Knowledge of where the PHI had been used, disclosed or accessed;
  - (ii) How the PHI that was improperly accessed, Used, or Disclosed might be used to cause harm to the individual or another individual; and
  - (iii) What steps can actually have a mitigating effect under the facts and circumstances of the specific situation.
- (b) The Privacy Official or designee must investigate the cause of the inappropriate access, use, or disclosure and take corrective actions to prevent such from re-occurring.
- (c) HCCs shall notify the NJIT Privacy Official of inappropriate accesses, Uses, and Disclosures, who will commence an inquiry. If the Privacy Official finds that an inappropriate use, disclosure or access has occurred, the Privacy Official will

determine appropriate mitigation and notify the HCC, which in turn must implement the correction measure the Privacy Official deemed appropriate. The HCC will confirm with the Privacy Official that corrective measures have been put into place.

- (d) The Office of General Counsel must be notified of all inappropriate uses, disclosures and accesses to PHI which occurred at NJIT.

**Q. AMENDMENT OF PRIVACY PRACTICES AND POLICIES**

- 1. NJIT, through its Privacy Official and Office of General Counsel, will work timely to change its Notice of Privacy Practices and amend its Privacy Policies and forms as necessary and appropriate to comply with changes in the law or to accommodate changes in the structure or operations of NJIT or its HCCs. Any such changes or amendments will be effective for PHI created or received by NJIT or its HCCs after the effective date of the amendment.

2. Procedures

In order to effectuate changes to NJIT's Privacy practices and Policy addressed in the Notice of Privacy Practices, NJIT through its Privacy Official, will:

- (a) Ensure that the NJIT Privacy Policy, if revised to reflect a change in the NJIT's Privacy practices, comply with the HIPAA Privacy Regulations and applicable state laws that are not preempted.
- (b) Document the revised Privacy Policy, in written or electronic format, and retain such documentation for at least six (6) years.
- (c) Revise NJIT's Notice of Privacy Practices as required by the Privacy Regulations to state the changed practice and make the revised Notice available as required.

**R. WAIVER OF RIGHTS**

- 1. NJIT will not require individuals to waive (a) their right to file a complaint with the Secretary of the Department of Health and Human Services or any other enforcement agency regarding NJIT's compliance with the Privacy Regulations or (b) any other rights under the Privacy Regulations as a condition of Treatment or Payment Activities.

2. Procedures

- (a) Any person with knowledge of a violation of this Policy should report the incident to the NJIT Privacy Official.
- (b) If the NJIT Privacy Official receives a report of a violation of this Policy, NJIT Privacy Official will conduct an investigation to determine if a violation has occurred. If the report is substantiated, sanctions may be imposed.

## S. TRAINING

1. NJIT personnel associated with HCCs shall take the NJIT's HIPAA Privacy training annually. In addition, training shall be provided by the NJIT Privacy Official or HCC designee within a reasonable period of time after material changes to HIPAA or NJIT policies and procedures are made.
2. Procedures
  - (a) Program. NJIT, through the Office of General Counsel, the Privacy Official and any committee(s) established, will direct the methods and manner in which the NJIT's Privacy training will be accomplished.
  - (b) Materials. Training materials should include a test or some other opportunity to demonstrate understanding of the information presented. Training must be completed according to the HIPAA standards.
  - (c) Tracking. It is the responsibility of each HCC, in coordination with the Office of Compliance and/or Human Resources Office, to ensure that NJIT personnel receive training according to the NJIT's HIPAA Privacy Policies.
  - (d) Timing. All NJIT personnel working in what has been identified a HCC must complete HIPAA privacy training upon commencement of employment and then annually. If questions arise as to other members of NJIT's workforce being required to participate in HIPAA training, they should be directed to the Privacy Official.
  - (e) Material Changes. The NJIT Privacy Official or designee, or HCC will provide training to those workforce members whose job or academic functions are affected by a material change in the NJIT's Privacy Policies within a reasonable period of time after the change becomes effective.
  - (f) Sanctions. Employees who fail to complete the training may be subject to sanctions.
  - (g) Documentation. Documentation regarding training must be maintained by the HCC and the Privacy Official in written or electronic format, for at least six (6) years, or for as long as required by other applicable NJIT policies.

## T. SAFEGUARDS

1. NJIT, through its HCCs, will implement appropriate administrative, technical, and physical safeguards that will reasonably safeguard PHI from any intentional or

unintentional Use or Disclosure and incidental use and disclosure in violation of the NJIT's Privacy Policy.

NJIT personnel must reasonably safeguard PHI to limit incidental uses and disclosures made pursuant to an otherwise permitted or required use or disclosure.

2. HCCs may disclose PHI to other components of NJIT that are not designated HCCs only with individual authorization or as permitted or required by law. NJIT personnel who perform services for HCCs and other components of NJIT must not otherwise use or disclose PHI created or received in the course of or incident to their work for the HCC to other components of NJIT.
3. Technical safeguards regarding the protection of PHI maintained in electronic form are addressed by the NJIT Security Official.
  - (a) Verbal Communications. NJIT Personnel must exercise due care to avoid unnecessary Disclosures of PHI through oral communications. Voices should be quiet and conversation should not occur if unauthorized individuals are in listening range. Individual identifying information should be disclosed during oral conversations only when necessary for Treatment, Payment, teaching, Research, or Operational purposes. Dictation and telephone conversations must be conducted away from public areas if possible. Speakerphones may be used only in private areas.
  - (b) Telephone Messages. Telephone messages and appointment reminders may be left on answering machines and voice mail systems, unless the individual has requested and received approval for an alternative means of communication PHI should not be left in a telephone message. Telephone messages regarding test results or that contain information that links a individual's name to a particular medical condition, diagnosis, or treatment must be avoided.
  - (c) Faxes. The following procedures must be followed when faxing PHI:
    - (i) Only the PHI necessary to meet the authorized requester's needs may be faxed.
    - (ii) HCC should designate employees who can fax, or approve the faxing of, PHI.
    - (iii) All faxes containing PHI must be accompanied by a HIPAA compliant cover sheet that includes a confidentiality notice. PHI may not be included on the cover sheet.
    - (iv) Reasonable efforts should be made to ensure that fax transmissions are sent to the correct destination.

- (v) Fax machines must be located in secure areas not readily accessible non-authorized individuals. Incoming faxes containing PHI must not be left sitting on or near the machine for extended periods of time.
- (iv) Fax confirmation sheets shall be reviewed to ensure the intended destination matches the number on the confirmation sheet, if available. The confirmation sheet shall be attached to the document that was faxed.
- (vii) All instances of misdirected faxes containing PHI must be reported as soon as practicable to the NJIT Privacy Official who will take appropriate action.
- (d) Mail. All mail containing PHI whether outgoing or internal must be in sealed envelopes.
- (e) Sign-in Sheets. Sign-in sheets in HCCs that primarily see and treat individuals with mental health, substance abuse, communicable disease, or other particularly sensitive conditions must be structured in a manner so that subsequent signers cannot identify previous signers.
- (f) Destruction Standards. PHI must be discarded in a manner that protects the confidentiality of such information and in accordance with the Records Management policy. Paper and other printed materials containing PHI shall be destroyed or cross-cut shredded in a manner so that it cannot be read or reconstructed. HCCs are encouraged to obtain and use locked recycling bins from one of NJIT's approved recycling vendors. Magnetic media and diskettes containing PHI shall be overwritten, reformatted, or destroyed.
- (g) Physical Safeguards.
  - (i) Paper Records. Documents containing PHI must be stored or filed in such a way as to avoid access by unauthorized persons. Some type of physical barrier must be used to protect paper records from unauthorized access. Documents containing PHI on attended desks, counters, or nurses' stations must be placed face down or concealed when not in use to avoid access by unauthorized persons. Paper records shall be secured when the area is unattended.
  - (ii) Storage. Paper records that contain PHI and are stored outside of the HCC must be inventoried and stored in a secure facility. The HCC shall maintain a log of who has access to the stored records and have in place a procedure for terminating access when employment ends.
  - (iii) Removal. NJIT employees shall not remove documents containing PHI from NJIT premises unless necessary for treatment, payment, or operations to an individual or required by law. The safety and return of the documents checked out or removed are the sole responsibility of the person who checked

them out or removed them and care must be exercised at all times to maintain the security of the records.

Documents containing PHI that are removed from NJIT premises must not be left unattended in places in which unauthorized persons can gain access, legally or otherwise.

- (iv) Theft/Loss. The theft or loss of any document containing PHI shall be reported immediately to the NJIT Privacy Official and the Office of General Counsel so that mitigation options can be considered and implemented as soon as possible.
- (h) Escorting Visitors and Individuals. HCCs shall not permit unescorted visitors or individuals in areas where individuals are being treated or that contain PHI.
- (i) Computer/Work Stations. Computer monitors must be protected from view, positioned away from common areas, or covered by a privacy screen to prevent unauthorized observation of PHI. The screens on unattended computers must be returned to a password-protected screen saver or login screen.
- (j) Equipment. Equipment containing PHI (e.g., desktop computers, fax machines, monitors) must be physically and/or technically secured when not attended, as appropriate.
- (k) Technical Safeguards.
  - (i) Telemedicine Technology. If applicable, the use of Telemedicine Technology must meet all Safeguards as specified in the HIPAA Privacy and Security Standards.
  - (ii) E-mail Within NJIT. Sending e-mail that contain PHI for Treatment, Payment, or Health Care Operations within NJIT is acceptable. PHI sent should be limited to the minimum necessary with appropriate safeguards and should be sent as a limited data set when possible.
  - (iii) E-mail Outside NJIT. The use of e-mail to transmit PHI outside NJIT for treatment, payment, or health care operations is prohibited unless the message is sent in a manner that complies with HIPAA.
  - (iv) Without Encryption Capabilities (E-Mail Communication Denial). If an individual sends an e-mail to NJIT personnel asking a health care question or requesting any type of information that would require a Disclosure of PHI, the request for response shall be declined by sending a message similar to the following:

*“I have received your health care question or request for health information. However, I cannot respond using e-mail because to do so would require the transmission of information that I consider to be highly sensitive, and e-mail that may be subject to interception. I will respond to your question or request through some other means of communication. If you wish to receive health information via email, please submit “Consent for Electronic Communication form.”*

- (v) Email Notice. All e-mails containing PHI transmitted by HCCs must contain a Confidentiality Notice similar to the following:

Confidentiality Notice

*This e-mail, including any attachments, contains information that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents is prohibited.*

*If you have received this e-mail in error, please notify the sender immediately by a “reply to sender only” message and destroy all electronic and hard copies of the communication, including attachments.*

- (l) Electronic Documents. Documents and attachments and/or images containing PHI must be stored on network servers with appropriate security restrictions in accordance with Information Services and Technology Security Policies.
- (m) Portable Computing Devices (e.g., laptops and hand-held computers). NJIT Personnel must use extreme caution when using Portable Computing Devices to store PHI. PHI should not be stored on Portable Computing Devices unless absolutely necessary; it should be stored on servers in a secure enterprise data center in accordance with IT Security policy. Portable Computing Devices must never be left unattended in unsecured places.

Those storing PHI on personal portable devices are responsible for the security of the PHI stored on such devices. PHI contained on such devices must be encrypted. All NJIT electronic security policies such as password protection, must be followed.

- (n) Other Uses of the Internet. Any other electronic transmission of PHI requires that appropriate safeguards and procedures be implemented. HCC’s should contact the Security Officer for more information.

- (o) Use of Social Media Sites. PHI shall not be posted on social media sites, such as Facebook or Twitter.
- (p) Use of Digital Copiers/Scanners. HCCs using digital copiers, scanners, fax machines, and other equipment that stores PHI, even temporarily, must verify that appropriate data security features (e.g., encryption, overwriting) are enabled. In addition, before such equipment is returned to the vendor, surplus, or otherwise disposed of, the HCC must take steps to ensure the hard drive is destroyed or completely overwritten. These steps may include, but are not limited to, imposing the requirements on the vendor during the contracting process or working with the Security Officer.
- (q) Theft or Loss. The theft or loss of any electronic medical record or device containing PHI (including those owned by the individual) shall be reported immediately to the Office of General Counsel, the NJIT Privacy Official and the Security Officer so that mitigation and reporting options can be considered and implemented as soon as possible.

## **U. SANCTIONS**

1. Failure to comply with any provision of this policy may result in sanctions as appropriate against NJIT Personnel and NJIT Business Associates who fail to comply with the NJIT's Privacy Policies and/or the Privacy Regulations. Sanctions will be imposed in line with collective bargaining agreements and NJIT policy.

If NJIT becomes aware of a pattern of activity or practice of a Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the contract with NJIT or under the Privacy Regulations, NJIT will take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful or not appropriate, shall (a) terminate the contract, if possible; or (b) report the problem to the Secretary of the Department of Health and Human Services or other applicable enforcement agency.

NJIT will not impose sanctions against NJIT Personnel or Business Associates for: (a) engaging in good faith whistleblower activities related to Privacy issues; (b) submitting a complaint in good faith to the Secretary of the Department of Health and Human Services or other enforcement agency; (c) participating in an investigation regarding Privacy issues; or (d) appropriately registering opposition to a violation of the Privacy Policies or Regulations.

2. Documentation.

Documentation regarding any sanction imposed for a violation of this policy shall be retained in the sanctioned person's personnel file, whichever is applicable, in written or electronic format, for at least six (6) years. Copies of such documentation should be forwarded to the NJIT Privacy Official upon request, who also should maintain

such documentation for the minimum retention period. Documentation of any sanction imposed against a Business Associate should be retained by the NJIT Privacy Official for the minimum retention period.

## **V. USES AND DISCLOSURES - GENERAL**

1. NJIT will use and disclose PHI only as permitted by HIPAA regulations. Permitted uses and disclosures include:
  - (a) For Treatment, Payment, or Health Care Operations;
  - (b) Incident to an otherwise permitted Use or Disclosure, to the extent that the Minimum Necessary Rule provides;
  - (c) Pursuant to an Authorization;
  - (d) Pursuant to an agreement such as a Durable Power of Attorney for Health Care or a Health Care Proxy;
  - (e) As permitted by and in compliance with disclosures related to:
    - (i) Mental health records;
    - (ii) Business Associates;
    - (iii) Fundraising;
    - (iv) Limited Data Sets; and
    - (v) As required by law.
  - (f) To report unlawful or unprofessional conduct or conduct that endangers others that a whistleblower believes in good faith NJIT or NJIT personnel has engaged in, so long as the Disclosure is to a Health Oversight Agency/Public Health Authority or health care accreditation organization that has authority to investigate such conduct or an attorney retained to advise the reporting party on legal options.
  - (g) By NJIT Personnel who are the victim of a crime reporting to Law Enforcement, so long as the PHI disclosed is about the suspect and is limited name and address, date and place of birth, Social Security Number (“SSN”), ABO blood type and RH factor, type of injury, date and time of treatment, date and time of death if applicable, and distinguishing physical characteristics.
  - (h) Of certain immunization records without the standard Authorization form to a school about an individual who is a student or prospective student of the school (or to the individual, if the requested information is for presentation to a school) and if:

- (i) The PHI that is disclosed is limited to proof of state-required immunizations; and
- (ii) The school is required by state or other law to have such proof of immunization prior to admitting the individual; and
- (iii) NJIT obtains and documents the request for the disclosure from either;
  - (1) a parent, guardian, or other person acting in loco parentis of the individual, if the individual is not an emancipated minor; or
  - (2) the individual, if the individual is an adult or emancipated minor.

The HCC entities may accept a verbal request for these immunization records. All verbal requests must be documented in the patient's medical record. HCCs may use the Immunization Release Request Form,. For other Uses and Disclosures, NJIT personnel should consult with the Privacy Official or the Office of General Counsel.

**W. MINIMUM NECESSARY RULE**

1. NJIT, through its HCCs, has identified the NJIT personnel who need access to PHI to carry out their responsibilities. NJIT personnel must make reasonable efforts to limit the use and disclosure to the minimum that is reasonably necessary to accomplish the intended purpose for the use and disclosure or request.

The minimum necessary rule does not apply to:

- (a) Disclosures to or requests by a Health Care Provider for Treatment;
- (b) Disclosures to the individual or his/her legal representative;
- (c) Uses or Disclosures made pursuant to an Authorization;
- (d) Disclosures made to the Secretary of the Department of Health and Human Services for compliance and enforcement of the Privacy Regulations;
- (e) Uses and Disclosures Required by Law; or
- (f) Uses and Disclosures required for compliance with HIPAA standardized transactions.

## 2. Procedures

### (a) Access

NJIT personnel who are directly involved in an individual's treatment and care may have access to all of the individual's PHI.

It is a violation of the minimum necessary rule for a Health Care Provider to access the PHI of individuals with whom the provider has no treatment relationship, unless for approved research purposes or as permitted by the Privacy Regulations and these Policies.

### (b) Disclosures

#### (i) Routine Disclosures

HCCs should implement standard protocols, when appropriate, to limit the PHI disclosed on a routine or recurring basis. Copies of such protocols shall be maintained by each HCC and provided to the Privacy Official upon request.

(ii) Non-Routine Disclosures. No non-routine disclosures of PHI shall be made without first contacting the Office of General Counsel or the NJIT Privacy Official. When considering making non-routine Disclosures, consideration will be given to the following criteria: (1) the purpose of the request; (2) any potential harm that would result to the individual, the NJIT, or any other third party as a result of the Disclosure; (3) the relevance of the information requested; and (4) other applicable state and federal laws and regulations.

(iii) NJIT personnel may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as a minimum necessary for the stated purpose when (1) making disclosures to public officials as required by law, if the public official represents that the information requested is the minimum necessary for the stated purpose; (2) the information requested by another covered entity; (3) the information is requested by a professional who is an employee of NJIT or is a business associate of NJIT providing professional services, if the employee or business associate represents that the information is the minimum necessary for the stated purpose(s); or (4) documentation submitted by a researcher that the information is preparatory to research or related to research on a decedent or that the disclosure has been approved by the IRB or Privacy Board.

(c) Requests

Non-Routine Requests: The Privacy Official or designee will be responsible for reviewing all non-routine requests (those that do not occur on a day-to-day basis as part of Treatment, Payment or Health Care Operation activities) for PHI. When considering non-routine requests, the following criteria must be considered: (i) the reason for the request; (ii) any potential harm that would result to the individual, NJIT, or any other third party as a result of the Disclosure; (iii) the relevancy of the information requested; and (iv) other applicable state and federal laws and regulations.

**X. TREATMENT, PAYMENT AND HEALTH CARE OPERATIONS**

1. HCCs may Use or Disclose PHI for their own Treatment, Payment, or Health Care Operations, as listed below.
  - (a) Treatment activities of another Health Care Provider;
  - (b) To another Covered Entity or a Health Care Provider for the Payment activities of the entity that receives the information;
  - (c) To another Covered Entity for certain enumerated Health Care Operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the PHI being requested and the information pertains to such relationship.
  - (d) PHI can be exchanged between two covered entities for the following health care operations: (i) conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; (ii) population-based activities relating to improving health or reducing health care costs; (iii) protocol development, (iv) case management and care coordination; (v) contacting Health Care Providers and individuals with information about treatment alternatives; (vi) reviewing the competence or qualifications of Health Care Professionals; (vii) evaluating practitioner and provider performance; (viii) conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as Health Care Providers; (ix) training non-health care professionals; and (x) accreditation, certification, licensing, or credentialing activities.
  - (e) HCCs that participate in an organized health care arrangement may disclose PHI about an individual to another Covered Entity that participates in the Organized Health Care Arrangement for any Health Care Operations activities of the Organized Health Care Arrangement.

- (f) For Uses and Disclosures of a individual's PHI other than for Treatment, Payment, and Health Care Operations of a HCC or another Health Care Provider, an Authorization from the individual required.
- (g) An individual authorization is required for exchanges of PHI between HCCs and NJIT departments that have not been designated as HCCs.
- (h) Due to consent requirements under state law and the Federal Education Rights Privacy Act ("FERPA"), which pertains to student records (including student treatment records) HCCs must include language informing currently enrolled NJIT students that they are consenting to the use of PHI for Treatment, Payment, and Health Care Operations purposes in the Acknowledgement of Receipt of Notice of Privacy Practices form.

**Y. AUTHORIZATION**

1. HCCs cannot Use or Disclose PHI for purposes other than Treatment, Payment, and Health Care Operations without a valid written Authorization from the individual, except as otherwise permitted by these Policies. The Use or Disclosure made must be consistent with the Authorization.

Information released pursuant to Authorization may include alcohol and/or drug abuse records protected under federal and/or state law. Re-disclosure of such alcohol and/or drug abuse records by the recipient is prohibited without specific Authorization, as stated on the Authorization form.

(a) Psychotherapy Notes

NJIT personnel must obtain an Authorization for any use of disclosure of psychotherapy notes, except in the following circumstances:

- (i) The HCC who originated the notes may use them for treatment.
- (ii) The HCC may use or disclose the notes for:
  - (1) Its own training;
  - (2) To defend itself in legal proceedings brought by the individual;
  - (3) For HHS to investigate HCCs' compliance with HIPAA;
  - (4) To avert a serious and imminent threat to public health or safety;
  - (5) To a health oversight agency;
  - (6) For the lawful activities of a coroner or medical examiner; or
  - (7) As required by law.

(b) Fundraising

HCCs must obtain an Authorization to Use and Disclose PHI for certain fundraising activities.

(c) Marketing

HCCs must obtain an Authorization for any Use or Disclosure of PHI for marketing, except in certain circumstances

(d) Conditioning of Authorizations

HCCs may not condition the provision of Treatment to a individual on the receipt of an Authorization, except in the context of Research involving Treatment.

One exception to the prohibition on conditioning treatment on the receipt of authorization relates to health care services provided at the request of a third party. For example, HCCs can require an authorization as a condition to providing a drug screening test or physical requested by an employer.

(e) Revocation of Authorizations

HCCs must permit individuals to revoke their Authorizations, except to the extent the HCC has already taken action in reliance on the Authorization. To revoke an Authorization a individual must provide written notice to the HCC that received the original Authorization or to the NJIT Privacy Official.

2. Procedures

(a) Any individual desiring access to or a copy of his PHI must submit a valid Authorization to the HCC or NJIT Privacy Official. The Authorization must contain all of the elements required by the Privacy Regulations and State law

(b) Prior to Using or Disclosing PHI pursuant to an Authorization, NJIT personnel must review the Authorization to determine if it is valid. HCCs may contact the Office of General Counsel or the NJIT Privacy Official for help in determining whether an Authorization is valid. An Authorization is not valid if it contains any of the following defects:

- (i) The expiration date has passed or the expiration event is known to have occurred;
- (ii) The Authorization has not been filled out completely;
- (iii) NJIT Personnel have knowledge that the Authorization has been revoked;
- (iv) NJIT Personnel have knowledge that some material information in the Authorization is false;

- (v) The Authorization was obtained by improperly conditioning Treatment upon its receipt;
- (vi) The Authorization is missing one of the elements required by the Privacy Regulations or State law; or

If the Authorization is for Psychotherapy Notes, it is combined with another type of Authorization or document.

- (c) If a HCC seeks an Authorization from an individual for a Use or Disclosure of PHI, the HCC must provide the individual with a copy of the signed Authorization.
- (d) HCCs must keep copies of Authorizations in the individual file for at least six (6) years.

## **Z. MENTAL HEALTH RECORDS AND PSYCHOTHERAPY NOTES**

### **1. Mental Health Records – General**

An individual generally has the right to access his/her mental health records other than Psychotherapy Notes. An individual can be denied access to his/her mental health records for one of the reasons set forth in this policy.

Psychotherapy notes have a very limited definition. They are notes recorded in any medium by a Health Care Provider who is a mental health professional documenting or analyzing the contents of a 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.

Mental health records, other than Psychotherapy Notes, may be Used and Disclosed by NJIT personnel for Treatment, Payment, and Health Care Operations to the same extent and subject to the same limitations applicable to other types of PHI,

Persons or entities who desire access to a individual's mental health records for purposes other than Treatment, Payment, or Health Care Operations must obtain an Authorization as required. The Office of General Counsel should be contacted for assistance with responding to mental health record requests. An authorization for the use or disclosure of psychotherapy notes cannot be combined with an authorization for release of other medical records.

## 2. Psychotherapy Notes

An individual does not have a right to access Psychotherapy Notes relating to him/herself unless (a) the individual's Treatment professional approves such access in writing; or (b) the individual obtains a court order authorizing such access.

An individual Authorization must be obtained for any Use or Disclosure of Psychotherapy Notes, except for the following purposes:

- (a) Use by the originator (the creator) of the Psychotherapy Notes for Treatment purposes;
- (b) Use or Disclosure of Psychotherapy Notes by NJIT personnel for conducting NJIT-related 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;
- (c) Use or Disclosure to the Office of General Counsel or designee to defend the NJIT or NJIT personnel in a legal action or other proceeding brought by the individual;
- (d) Use or Disclosure to the Secretary of Health and Human Services, or any other officer or employee of the Department of Health and Human Services to whom the authority has been delegated, to conduct enforcement activities;
- (e) Use or Disclosure needed for oversight of NJIT personnel who created the Psychotherapy Notes;
- (f) Use or Disclosure needed by a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or conducting other duties as authorized by law; or
- (g) When NJIT personnel, in good faith, believe the Use or Disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.
- (h) The Privacy Regulations do not permit a health plan to condition enrollment, eligibility for benefits, or payment of a claim on obtaining an individual's authorization to use or disclose psychotherapy notes.

**AA. REQUIRED BY LAW**

1. NJIT personnel may Disclose PHI without the individual's consent, Authorization, or opportunity to agree or object as required by applicable state and federal laws, including those listed below.
  - (a) Abuse or Neglect of Children
  - (b) Adult Victims of Abuse, Exploitation or Criminally-Injurious Conduct
  - (c) Judicial and Administrative Procedure
    - (i) Court Orders
    - (ii) Subpoenas
  - (d) Law Enforcement
  - (e) Serious Threats to Health and Safety
  - (f) Specialized Government Functions
  - (g) Public Health (including):
    - (i) Statistical Reports
    - (ii) Birth Certificates
    - (iii) Death Certificates
    - (iv) Communicable Diseases
  - (h) Health Oversight
  - (i) Medicaid
  - (j) Death Reports
  - (k) Coroners/Medical Examiner
  - (l) Funeral Directors
  - (m) Organ and Tissue Donations
2. Procedures
  - (a) Abuse or Neglect of Children.
    - (i) Reporting Child Abuse, Neglect, or the Birth of a Chemically-Dependent Child. NJIT personnel who have reason to believe that a child under the age of 18 is a victim of abuse or neglect or who attend the birth of a child who tests positive for alcohol or a controlled dangerous substance are required by state law to promptly notify the New Jersey Department of Human Services.

Abuse for purposes of this section means harm or threatened harm to the child's health, safety, or welfare by a parent; legal guardian; custodian; foster parent; adult residing in the home of the child; the owner, operator, or employee of a child care facility; or an agent or employee of a private residential home, institution, facility, or day treatment program.

"Neglect" for purposes of this section means (i) failure to provide adequate food, clothing, shelter, medical care, and supervision; (ii) failure to provide special care which is necessary because of the physical or mental condition of the child; or (iii) abandonment.

Reports of abuse or neglect shall be made to the telephone hotline established by DHS, in accordance with state law. A written record of each such report and the circumstances surrounding such report shall be maintained by the HCC making the report and sent to the Privacy Official. The report must contain the following:

- (1) The names and addresses of the child and the child's parents or other persons responsible for the child's health, safety, or welfare;
- (2) The child's age;
- (3) The nature and extent of the abuse or neglect, including any evidence of previous injuries;
- (4) Whether the child has tested positive for alcohol or a controlled dangerous substance; and
- (5) Any other information that may be helpful in establishing the cause of the injuries and the identity of the person or persons responsible.

HCCs also must provide copies of the results of the examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to Law Enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse or neglect in the case, upon written verification by the applicable agency of a pending investigation.

- (ii) Reporting Criminally Inflicted Injuries. NJIT personnel examining, attending, or treating a child suffering from what appears to be criminally injurious conduct, including, but not limited to, a misdemeanor or felony that results in bodily injury, threat of bodily injury, death, or child physical or sexual abuse shall promptly report the matter to the local police department. The report may require the disclosure of PHI relevant to the investigation. HCCs should establish procedures for facilitating and coordinating reporting requirements.

- (iii) Notification. To the extent a report is made pursuant to 1 (a) or (b) above, NJIT personnel must promptly notify the Personal Representative of the child who is the subject of the report, unless NJIT Personnel, in the exercise of professional judgment, believe informing the Personal Representative would place him/her at risk of serious harm or if they believe such Personal Representative is responsible for the abuse, neglect, or other injury and that informing such person would not be in the best interests of the child.

(b) Adult Victims of Abuse, Neglect, Exploitation, or Criminally-Injurious Conduct.

- (i) Reporting Abuse, Neglect, and Domestic Violence. NJIT personnel who have reasonable cause to believe that a Vulnerable Adult is suffering from abuse, neglect, or exploitation shall promptly report the matter to the New Jersey Department of Human Services; the office of the county prosecutor in the county in which the suspected abuse, neglect, or exploitation occurred; or the local police or sheriff's department, in accordance with New Jersey state law.

A Vulnerable Adult is an individual who is incapacitated or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of him/herself; is unable to manage his or her property and financial affairs effectively; is unable to meet essential requirements for mental or physical health or safety; or is unable to protect him/herself from abuse, neglect, or exploitation without assistance from others.

Abuse for purposes of this section means causing or permitting: (1) the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or (2) the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a Vulnerable Adult by a caretaker or other person providing services to a Vulnerable Adult.

Exploitation or Exploit means an unjust or improper use of the resources of a Vulnerable Adult for the profit or advantage, economic or otherwise, of a person other than the Vulnerable Adult through the use of undue influence, coercion, harassment, duress, deception, false presentation, or false pretense.

Neglect for purposes of this section means: (1) the failure to provide protection for a Vulnerable Adult who is unable to protect his or her own interest; (2) the failure to provide a Vulnerable Adult with adequate shelter, nutrition, health care, or clothing; or (3) the causing or permitting of harm or the risk of harm to a Vulnerable Adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

Reports of victims of Abuse, Neglect, or Exploitation must contain the name and address of the Vulnerable Adult, the name and address of the caretaker, if any, and a description of the current location and current condition of the Vulnerable Adult and of the situation which may constitute Abuse, Neglect, or Exploitation of the Vulnerable Adult, in accordance with state law. HCCs shall provide PHI to Law Enforcement officers or employees conducting investigations upon written verification by the applicable agency of a pending investigation.

- (ii) Reporting Criminally-Injurious Conduct. Any NJIT Personnel examining, attending, or treating an adult individual for what appears to be criminally-injurious conduct, including, but not limited to, a misdemeanor or felony that results in bodily injury, threat of bodily injury, or death, shall promptly report the matter to the local police department. The report may require the disclosure of PHI relevant to the investigation. HCCs should establish procedures for facilitating and coordinating reporting requirements.
- (iii) Notification. To the extent a report is made pursuant to (b)(i) or (b)(ii) above, NJIT personnel must promptly notify the Personal Representative of the Vulnerable Adult who is the subject of the report, unless NJIT personnel, in the exercise of professional judgment, believe informing the individual would place him/her at risk of serious harm of if they believe that such Personal Representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the Vulnerable Adult.

(c) Judicial and Administration Procedure

PHI may be released pursuant to:

- (i) Court Orders. A court order is a direction of the court that orders a party to produce certain specified documents. Upon the receipt of a court order for the Disclosure of medical records containing PHI, NJIT Personnel or the recipient of the order must immediately forward the court order to the NJIT's Office of General Counsel or designee. Upon determining that the court order is valid and meets all legal requirements, NJIT Personnel will be advised to release the information pursuant to the court order. The individual whose records are being requested is not required to provide an Authorization for the Disclosure of the records pursuant to a court order.
- (ii) Special Requirements for Court Orders Relating to Substance Abuse Records. Records of the identity, diagnosis, prognosis, or treatment of NJIT individuals maintained in connection with substance abuse education, prevention, training, treatment, rehabilitation, or Research conducted, regulated by, or assisted by any United States department or agency shall be confidential, in

accordance with State law and may not be released under a court order unless the court order complies with 42 C.F.R 2.13(a) and 2.61-2.67.

(iii) Disclosure of Substance Abuse Records. The content of these records may be Disclosed to third parties as follows: (1) in accordance with the individual's prior written Authorization; (2) to medical personnel to the extent necessary to meet a bona fide medical emergency; (3) to qualified personnel for the purpose of conducting scientific Research, management audits, financial audits, or program evaluation only if the individual is not identified directly or indirectly; (4) upon receipt of a valid court order that meets all of the requirements of 42 C.F.R. 2.113 (a) and 2.61-2.67.

(b) Subpoenas. A subpoena is a unilateral request of a party for the production of documents. A subpoena is not generally approved by a judge. Therefore, it is important for the NJIT to determine whether the individual's Authorization or a court order is required for the release. All subpoenas must be sent to the Office of General Counsel or designee for this determination.

The subpoena must be accompanied by Satisfactory Assurance that reasonable efforts were made to notify the individual of the request (this may be in the form of proof that the individual has gotten notice of the request for his/her PHI) or to obtain a qualified protective order.

(c) Disclosures for Law Enforcement Purposes

(i) Locate an Individual. Certain limited PHI regarding a individual may be disclosed to a Law Enforcement Official who requests such information to identify or locate a suspect, fugitive, material witness, or missing person. Absent a request, such information may not be disclosed. A request may be made orally or in writing and may include a general request seeking the public's assistance in identifying a suspect, fugitive, material witness, or missing person.

If a request is made by a Law Enforcement Official, including the NJIT for a individual's PHI, the Office of Legal Counsel shall be contacted immediately to authenticate the request for Disclosure and to determine whether the official is authorized to make such a request. Upon determining that the request is valid, the Office of General Counsel shall direct the appropriate person(s) to provide the limited information set forth below.

The Disclosure of PHI pursuant to this section is limited to the following:

- (1) Name and address;
- (2) Date and place of birth;

- (3) Social Security Number;
- (4) ABO, blood type, and the factor;
- (5) Type of injury, if applicable;
- (6) Date and time of treatment;
- (7) Date and time of death, if applicable;
- (8) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos.

NJIT personnel should not disclose any of the following information: DNA data and analyses, dental records, or typing samples or analyses of tissues or bodily fluids other than blood.

- (ii) Administrative Requests. NJIT may disclose PHI to Law Enforcement Officials pursuant to an administrative request (including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized by Federal or State law), so long as (1) the information sought is relevant and material to a legitimate Law Enforcement inquiry; (2) the request is specific and limited in scope to the extent reasonably practicable for the purpose; and (3) the de-identified information cannot reasonably be used. NJIT Personnel should consult with the Office of General Counsel before making any Disclosures pursuant to this provision.
- (iii) Individual Crime Victim. In addition to other Disclosures regarding potential victims of a crime, the NJIT may disclose to Law Enforcement Officials information about a individual who is suspected to be a victim of a crime, if (1) the individual consents to the Disclosure; or (2) if the individual is unable to provide consent, all of the following requirements are met: (a) the Law Enforcement Official represents—preferably via a Verification form-- that such information is needed to determine whether a violation of law by a person other than the individual has occurred, that such information is not intended to be used against the individual, and that immediate Law Enforcement activity that depends on the Disclosure would be materially and adversely affected by waiting until the individual is able to consent; and (b) the Disclosure is in the best interest of the individual as determined by NJIT Personnel in the exercise of professional judgment.

Verification forms are available on the NJIT's HIPAA forms webpage and from the NJIT Privacy Official. NJIT personnel should consult with the Office of General Counsel or NJIT Privacy Official before making any Disclosures pursuant to this provision.

(iv) Crime on Premises. The NJIT may Disclose to Law Enforcement Officials PHI that NJIT personnel believe in good faith constitutes evidence of criminal conduct that occurred on NJIT property. NJIT personnel should consult with the Office of General Counsel before making any disclosures pursuant to this provision.

(v) Off-Premises Emergency. NJIT Personnel providing emergency health care in response to a medical emergency, other than an emergency on NJIT property, may Disclose PHI to a Law Enforcement Official if the Disclosure appears necessary to alert Law Enforcement to: (1) the commission and nature of a crime; (2) the location of such crime or that of the victim(s) of such crime; and (3) the identity, description, and location of the perpetrator of such crime. NJIT Personnel should consult with the Office of General Counsel before making any Disclosures pursuant to this provision.

(d) Uses or Disclosures to Avert Serious Threats to Health and Safety

NJIT personnel may, consistent with applicable law, Use or Disclose PHI if NJIT Personnel, in good faith, believe such Use and Disclosure (1) 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; or (2) is necessary for Law Enforcement Officials to identify or apprehend an individual who (a) has made a statement admitting participation in a violent crime that NJIT personnel reasonably believes may have caused serious physical harm to the victim (provided that no Disclosure may be made under this circumstance if the Disclosure is made during the course of Treatment to affect the propensity to commit the criminal conduct that is the basis for the Disclosure, or actual counseling or therapy, or if the Disclosure is made during a request to initiate such Treatment); or (b) escaped from a Correctional Institution or from lawful custody. The Office of General Counsel should be consulted before any Disclosures of PHI are made pursuant to this provision.

(e) Uses and Disclosures for Specialized Government Functions

(i) Military

NJIT may Use and Disclose PHI of individuals in the United States and foreign armed forces for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission. The Office of General Counsel should be consulted to confirm that the requirements of such use or disclosure are met.

(ii) National Security

NJIT may Disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act, and to protect the President of the United States and certain other public officials as authorized by law. The Office of General Counsel or NJIT Privacy Official should be consulted to confirm that the requirements of this Disclosure are met.

(iii) Correctional Institutes/Inmates

NJIT may Disclose to a Correctional Institution or Law Enforcement Official having lawful custody of an inmate or other individual, and the Correctional Institution or Law Enforcement Official may use PHI about such individual, if the Correctional Institution or such Law Enforcement Official represents that such PHI is necessary for: (1) the provision of Health Care to such individuals; (2) the health and safety of such individual or other inmates; (3) the health and safety of the officers or employees of or others at the Correctional Institution or other persons responsible for the transporting of inmates; (4) Law Enforcement on the premises of the Correctional Institution; and/or (5) the administration and maintenance of the safety, security, and good order of the Correctional Institution. The Office of General Counsel or NJIT Privacy Official should be consulted to confirm that the requirements of this Disclosure are met.

(f) Public Health

NJIT personnel may Disclose PHI without the written Authorization of the individual to (1) the appropriate state or federal health authority authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability; to conduct public health surveillance, public health investigations, or public health interventions; or, at the direction of a Public Health Authority, to certain foreign governments; (2) to a Public Health Authority authorized by law to receive reports of child abuse or neglect; (3) to certain persons subject to FDA jurisdiction for limited purposes; (4) to persons who may have been exposed to a communicable disease or may be at risk of such, if authorized by law to provide such notice; and (5) to employers for certain medical surveillance work. Any such Disclosures shall be made only after consultation with the Office of General Counsel. Such permitted Disclosures shall also specifically include the following:

- (i) Statistical Reports. The State Department of Health is charged with tracking Health Information within the State of New Jersey. The State Department may request NJIT personnel to provide Health Care information for the purpose of statistical and other similar reports. NJIT may disclose the requested information without the individual's written Authorization. This

includes discharge data including, but not limited to, complete discharge data sets or comparable information for each individual/student discharged.

The Office of General Counsel or the NJIT Privacy Official must be notified upon the receipt of a request from the State Department of Health for such information to ensure appropriate reporting. The release of information must be limited to that information that is specified in the request.

(ii) Birth Certificates. If a birth occurs in a NJIT facility, a birth certificate must be prepared and filed by one of the following NJIT personnel in the indicated order of priority:

- (1) The physician in attendance at or immediately after the birth; or
- (2) Any other person in attendance at or immediately after the birth.

NJIT personnel must obtain the personal data, prepare the certificate, secure the signatures required by the certificate, and file the certificate with the local registrar. The physician in attendance must certify to the facts of birth and provide the medical information required by the certificate within five (5) days after the birth. No individual/student "Authorization" is necessary to disclose the information used to prepare and file the birth certificate.

(iii) Death Certificates. A death certificate for a death that occurs in New Jersey must be filed with the local registrar of the district in which the death occurred, within three (3) days after the death and prior to burial or removal of the body. A funeral director or similar person is responsible for filing the death certificate. However, the funeral director must complete the certificate of death as to personal data and deliver the certificate, within twenty-four (24) hours after the death, to the attending physician at the NJIT who was responsible for the individual's care or to the medical examiner. The NJIT Personnel responsible for the individual's care or the medical examiner must then complete and sign the certificate of death within forty-eight (48) hours after death. If the NJIT Personnel in charge of the individual's care is not in attendance at the time of the death, the medical certificate must be completed and signed within forty-eight (48) hours after death by other NJIT Personnel in attendance at the time of death. In this instance, the alternate physician must note on the face of the certificate the name of the attending physician and that the information shown is only as reported.

The Authorization of the individual's Personal Representative is not required to disclose information necessary to complete the certificate of death for filing.

- (iv) Communicable or Venereal/Sexually Transmitted Diseases. The term communicable disease means an illness due to a specific infectious agent or its toxic products, arising through transmission of that agent or its products from reservoir to susceptible host, either directly as from an infected person or animal, or indirectly through the agent of an intermediate plant or animal host, a vector, or the inanimate environment. It also means an infestation by an ectoparasite and similar species.

The term venereal disease or sexually transmitted disease means syphilis, gonorrhea, chancroid, granuloma inguinale, lymphogranuloma venereum, and any other disease that may be transmitted from any person to any other person through or by means of sexual intercourse and found and declared by medical science or accredited schools of medicine to be infectious or contagious, and declared to be communicable and dangerous to the public health.

PHI relating to communicable or venereal/sexually transmitted disease may be released without individual Authorization under the following limited circumstances, following consultation with the Office of General Counsel or the NJIT Privacy Official:

- (1) Court Order. Release of PHI may be made upon receipt of a court order.
- (2) Administrative Orders. Release of limited PHI relating to venereal/sexually transmitted or communicable diseases may be made to the State Department of Health upon the issuance of a final agency order issued by an administrative law judge, which is the final order of the State Department of Health, after the administrative law judge determines release is necessary to protect the health and well-being of the general public. In this instance, only the individual's initials shall be "Disclosed" unless the order specifies the release of the name of the individual.
- (3) NJIT Personnel Exposures. Release is made of medical or epidemiological information to NJIT Personnel who have had risk exposure. Risk exposure is exposure that is epidemiologically demonstrated to have the potential for transmitting a communicable disease.
- (4) Statistical Disclosures. Release is made of specific medical or epidemiological information for statistical purposes in such a way that no person can be identified.
- (5) Diagnosis and Treatment. Release is made of PHI among NJIT Personnel within the continuum of care for the purpose of diagnosis and

Treatment of a communicable or venerable/sexually transmitted disease of the individual whose information is released.

- (6) Reports of Venereal/Sexually Transmitted Disease. All NJIT Personnel who make a diagnosis or treat a individual for any venereal/sexually transmitted disease, as defined above, must promptly report the case, in writing, to the State Commissioner of Health. If NJIT Personnel know or have good reason to suspect that the individual with a venereal/sexually transmitted disease is conducting him/herself as to expose other persons to infection, or is about to so conduct him or herself in such a way, NJIT Personnel must notify the State Commissioner of Health of the name and address of the diseased individual and the essential facts of the case. This information may contain the individual's PHI.
- (7) Health Oversight Activities. NJIT personnel may disclose PHI to a Health Oversight Agency for certain oversight activities authorized by law, upon receipt of a written request for such. The request must state the purpose for which the PHI is sought. The Office of General Counsel or the NJIT Privacy Official must be consulted prior to any release of PHI under this section.
- (8) NJIT personnel may not refuse to provide the New Jersey Health Care Authority or the New Jersey Attorney General with access to such records on the basis that release would violate the individual's right of privacy, privilege against Disclosure or Use, or any professional or other privilege or right. The Disclosure of PHI pursuant to this Section will not subject any physician or other health services provider to liability for breach of any confidential relationship between a individual and a provider.
- (9) Workers' Compensation. Under the New Jersey's Workers' Compensation laws, an employer must provide to an injured employee with medical, surgical, or other attendance or Treatment; nurse and hospital service; as may be necessary after an injury that occurred during the course of employment.

**BB. DISCLOSURE TO FAMILY AND OTHERS INVOLVED IN AN INDIVIDUAL'S CARE**

1. Individuals Involved in Care/Payment

NJIT Personnel may disclose PHI to a individual's/ family member, other relative, close personal friend, or any other person identified by the individual, as long as the PHI disclosed is relevant to that person's involvement with the individual's care or Payment related to the individual's Health Care.

2. Notification/Location. NJIT Personnel may use or disclose PHI to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death.
3. Disaster Relief. NJIT Personnel may use or disclose PHI to a public or private entity authorized by law to assist in disaster relief efforts. The PHI that may be released is limited to the individual's location, general condition, or death.
4. Decedents. NJIT personnel may disclose a decedent's PHI to the decedent's family members, other relative, close personal friend, or individual previously identified by the decedent who were involved in the care or payment of care of the decedent prior to death, unless NJIT personnel know that doing so would be inconsistent with any prior expressed preference of the decedent. The PHI that may be disclosed must be limited to that PHI that is relevant to the individual's involvement in the decedent's care or payment of care.
5. Procedures
  - (a) Individual is Present – If the individual is present for, or otherwise available prior to, a Use or Disclosure to a family member or other as described above, and has the capacity to make Health Care decisions, NJIT Personnel may use or disclose the PHI if the NJIT Personnel:
    - (i) Obtains the individual's agreement and it's documented in the record;
    - (ii) Provides the individual with the opportunity to object to the disclosure (and the individual does not express an objection) and documents the lack of objection in the individual's medical record; or
    - (iii) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure and notes such in the individual's medical records.
    - (iv) University personnel may elect to use the authorization for verbal release of PHI as a mechanism for documenting the individual's agreement to verbal disclosures.
  - (b) Individual is Not Present – If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, NJIT personnel may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the PHI that is directly

relevant to the person's involvement with the individual's Health Care.

NJIT personnel may use professional judgment and experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of PHI.

- (c) Best Interests - The following criteria should be considered when determining whether it is in the individual's best interest to disclose the PHI to a family member or other:
  - (i) Whether the potential disclosure is common practice;
  - (ii) The nature of the relationship between the parties;
  - (iii) The sensitive nature of the information being disclosed;
  - (iv) The ability of the individual to manage necessary tasks (e.g., pick up prescriptions, medical supplies, x-rays, or other forms of PHI); and
  - (v) Whether an incapacitated individual is a suspected victim of domestic violence and whether the person seeking information about the individual may have abused the individual. In these instances, NJIT Personnel should not disclose information to the suspected abuser if there is reason to believe that such a disclosure could cause the individual harm.
- (d) Verifying Identity - NJIT personnel are not required to verify the relationship of relatives or other individuals involved in the individual's care, unless they have reason to doubt the relationship. NJIT Personnel should inquire into the individual's relationship with the individual and document it. The individual's act of involving the other person in his/her care also may suffice as verification of identity.

NJIT Personnel should contact the office of General Counsel or the NJIT Privacy Official if they have questions regarding releases under this policy.

#### **CC. BUSINESS ASSOCIATES**

1. A HCC may Disclose PHI to a Business Associate, and may allow a Business Associate to create, receive, maintain, or transmit PHI on its behalf, if the HCC ensures that the NJIT has executed a Business Associate Agreement.
2. A Business Associate is a person or entity who provides certain functions, activities, or services on behalf of NJIT that involves NJIT's PHI.
3. If the NJIT or a HCC knows of a pattern of activity or practice of a Business Associate that constitutes a material breach or violation of the Business Associate's

obligation under the Business Associate Agreement, the HCC should immediately notify the Office of General Counsel and the NJIT Privacy Official, and reasonable steps must be taken to cure the breach or end the relationship.

4. If such steps are unsuccessful, or cure is not possible, the Business Associate Agreement must be terminated. If termination is not possible, the problem with the Business Associate must be reported to the Secretary of the Department of Health and Human Services by the NJIT Privacy Official.
5. Procedures
  - (a) HCCs must identify their Business Associates and bring the need for contractual language to the attention of the Office of General Counsel, Purchasing Department, or Office of Risk Management, as appropriate, when the HCC routes a contract for signature or otherwise obtains the Business Associate's services.
  - (b) The NJIT Privacy Official is responsible for drafting, implementing, and updating the appropriate Business Associate language and/or agreements to comply with the requirements of HIPAA. All contracts must be reviewed by the Office of General Counsel in accordance with NJIT policies.
  - (c) Questions regarding the status of a vendor or independent contractor as a Business Associate should be forwarded to the NJIT Privacy Official.

## **DD. MARKETING**

1. NJIT must obtain an Authorization for any Use or Disclosure of an individual's PHI for Marketing, unless the communication is in the form of: (1) a face-to-face communication made by NJIT personnel to an individual; or (2) a promotional gift of nominal value provided by the HCC.

Marketing does not include communications:

- (a) to provide refill reminders for current medications;
- (b) for treatment purposes, such as care coordination; alternate therapies or treatments; health care providers or care settings; or
- (c) for health-related products or services provided by the HCC, such as health-related goods or services available only to a health plan enrollee that are not part of the plan;
- (d) for case management, care coordination, alternate treatment plans, and related functions, to the extent they are not treatment

2. If NJIT has received payment in exchange for making one of those communications, the communication may not be considered Health Care Operations unless; (i) the communication is made by NJIT and individual Authorization is obtained; or (ii) the communication is made by a Business Associate on behalf of NJIT and the communication is made consistent with the Business Associate agreement.
3. If the Marketing involves direct or indirect payment to NJIT or a HCC from a third party, the Authorization must state that payment is involved. The NJIT Privacy Official must be contacted to develop or review the proposed Authorization to ensure it complies with this Policy.

NJIT personnel are prohibited from selling individual lists to third parties and from disclosing PHI to a third party for the independent marketing activities of the third party, without first obtaining an Authorization from every individual on the list.

4. NJIT may not directly or indirectly receive remuneration in exchange for PHI unless authorized by the individual. However, that general rule does not apply if the purpose or the remuneration is for:
  - (a) Public Health activities;
  - (b) Research purposes where the price charged reflects the cost of preparation and transmittal of the information;
  - (c) Treatment of the individual;
  - (d) Health Care Operations related to the sale, merger, or consolidation of a Covered Entity;
  - (e) Performance of services by a Business Associate on behalf of NJIT;
  - (f) Providing the individual with a copy of the PHI maintained about him/her; or
  - (g) Other reasons determined necessary and appropriate by the Secretary of the Department of Health and Human Services.
5. Any HCC wishing to Use or Disclose PHI for marketing purposes must contact the NJIT Privacy Official.
6. Authorizations for Marketing must be kept in an individual's medical record for at least six (6) years from the date of signature.

## **EE. FUNDRAISING**

1. HCCs may use or Disclose to a Business Associate or an institutionally-related foundation the following PHI for the purpose of raising funds including soliciting gifts or sponsorships without an Authorization:

- (a) demographic information relating to an individual;
  - (b) dates of Health Care provided to an individual;
  - (c) department of service;
  - (d) treating physician information; and
  - (e) outcome information.
2. Any use or disclosure of PHI for fundraising purposes other than what is listed above requires the individual's authorization. Demographic information does not include the use or disclosure of any information about an individual's illness or treatment.
3. An individual's/student's demographic information (name, address, contact information, age, gender, date of birth, and insurance status), dates of receipt of Health Care services, department of service, treating physician information, and outcome information may be Used or Disclosed without the individual's Authorization for fundraising purposes only if the following requirements are met:
- (a) The NJIT's Notice of Privacy Practices contains a statement that NJIT may contact the individual to raise money for NJIT; and
  - (b) The Notice and all fundraising materials describe in a clear and conspicuous manner the procedures for a individual/ to opt out of receiving any additional fundraising communications. These procedures must generally include an email address or toll-free phone number as options. If an individual opts out, this choice must be treated as a revocation of Authorization.
4. All fundraising requests must go to the Office of General Counsel or the Privacy Official for approval.
5. Procedures
- (a) All fundraising requests must go to the Office of General Counsel or the Privacy Official for approval.
  - (b) HCCs must forward a copy of all opt-out requests to the NJIT Privacy Official, who will maintain a master opt-out list. If an individual opts out it will be consider a revocation of authorization.
  - (c) NJIT and its HCCs may not condition treatment or payment on an individual's choice to opt-out of any fundraising.
  - (d) If a HCC uses a public directory or other database not related to the PHI maintained by the HCC or NJIT, these procedures do not apply.

**FF. RESEARCH**

1. A HCC may use and disclose PHI for the purposes of Research only in accordance with NJIT's Office of Human Subject Research policies. NJIT's Institutional Review Board shall serve as the NJIT's Privacy Board for all Human Subject Research Projects.

The Use or Disclosure of PHI in Research requires one of the following, in accordance with NJIT's Human Subject Research and IRB policies and HIPAA regulations:

- (a) Authorization for the Use or Disclosure of PHI;
- (b) Waiver of the Authorization requirement by the Privacy Board;
- (c) De-identification of the PHI; or
- (d) Use of a Limited Data Set, with accompanying Data Use Agreement.

Authorizations must comply with 45 C.F.R. §164.508 and NJIT Human Research and IRB policies. Additional information can be located at <http://www.njit.edu/research/irb/human-subjects.php>.

2. Procedures

- (a) All Research that will involve the use or disclosure of PHI must be submitted to the NJIT Privacy Official and must be accompanied by the appropriate IRB and HIPAA Privacy forms.
- (b) The Privacy Official will determine whether the proposed Use or Disclosure of PHI complies with the applicable provisions of HIPAA.
- (c) Research involving the Use or Disclosure of De-Identified Health Information or Limited Data Sets must comply with NJIT's Human Subject Research and IRB policies as well as HIPAA regulations.
- (d) Persons conducting Research involving PHI are responsible for logging disclosures.

**GG. LIMITED DATA SETS**

1. A HCC may use and disclose a limited data set without individual Authorization only for the purposes of Research, public health, or Health Care Operations and if the HCC enters into a Data Use Agreement with the intended recipient of the limited data set.

A HCC may use PHI to create a limited data set or Disclose PHI to a Business Associate to create a limited data set on behalf of the HCC.

If a HCC knows of a pattern of activity or practice of the limited data set recipient that constitutes a material Breach or violation of the Data Use Agreement, it must immediately notify the Office of General Counsel, and reasonable steps must be taken to cure the Breach or end the violation. If such steps are unsuccessful or the Breach cannot be cured, the HCC must discontinue Disclosure of PHI to the recipient and report the problem to the NJIT Privacy Official, for report to Secretary of the Department of Health and Human Services.

## 2. Procedures

(a) Limited Data Set. In order to create a limited data set, the following direct identifiers of the individual or of relatives, employers, or household members of the individual must be removed:

- (i) Names;
- (ii) Postal address information, other than town, city, state, and zip code;
- (iii) Telephone numbers;
- (iv) Fax numbers;
- (v) Electronic mail addresses;
- (vi) Social Security Numbers;
- (vii) Medical record numbers;
- (viii) Health plan beneficiary numbers;
- (ix) Account numbers;
- (x) Certificate/license numbers;
- (xi) Vehicle identifiers and serial numbers, including license plate numbers;
- (xii) Device identifiers and serial numbers;
- (xiii) Web Universal Resource Locators (URLs);
- (xiv) Internet Protocol (IP) address numbers;
- (xv) Biometric identifiers, including fingerprints and voiceprints; and
- (xvi) Full-face photographs and comparable images.

The individual's birth date should be disclosed only if the NJIT and the recipient of the information agree that it is needed for their purpose.

(b) Data Use Agreements. All Data Use Agreements must be approved by the NJIT Privacy Official or Office of General Counsel prior to execution. A sample Data Use Agreement is available on the HIPAA forms webpage and from the NJIT Privacy Official. A Data Use Agreement must:

- (i) Establish the permitted uses and disclosures of the limited data set.
- (ii) Establish who is permitted to use or receive the limited data set.
- (iii) Provide that the recipient of the information will:
  - (1) Not use or further disclose the information other than as permitted by the Data Use Agreement;
  - (2) Use appropriate safeguards to prevent use or disclosure of the information other than as permitted by the agreement;
  - (3) Report to the NJIT any uses or disclosures the recipient is aware of that are not provided for by the Data Use Agreement;
  - (4) Ensure that the recipient's agents who have access to the information agree to the same restrictions as imposed on the recipient;
  - (5) Not use the information to identify the information or contact the individuals; and

Not use or disclose the information in a manner that would violate HIPAA if done by the HCC or NJIT.

## **HH. DE-IDENTIFIED INFORMATION/RE-IDENTIFICATION**

### 1. De-Identified Information/Re-Identification

HCCs can use and disclose de-identified Health Information without regard to the Privacy Policies or Regulations as long as the code or other means of identification designed to permit re-identification is not disclosed.

HCCs may Use PHI to create information that is not Individually Identifiable Health Information or Disclose PHI to a Business Associate to de-identify Health Information on behalf of the HCC. If de-identified information is re-identified, its use and disclosure become subject to regulation under the Privacy Policies and Regulations.

Health Information that does not identify an individual and for which there is no reasonable basis to believe that the Health Information can be used to identify the individual is de-identified information and is not individually identifiable or considered PHI. It is not subject to the requirements of the Privacy Regulations.

## 2. Procedures

### De-identification

Health Information can be de-identified by using one of the two methods listed below:

(a) Removal of Identifiers. The following identifiers of the individual or of the relatives, employers, or household members of the individual are removed and NJIT has no actual knowledge that the information could be used alone or with other information to identify the individual:

(i) Names;

(ii) All geographic subdivisions smaller than a state, including street address, city, county, precinct, and zip code and equivalent geocodes, except for the initial 3 digits of a zip code if, according to current publicly available data from the Census Bureau:

(1) the geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people, and

(2) the initial 3 digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000 (example, for the zip code 73069, all areas using the zip code beginning with 730 have more than 20,000 in the aggregate).

(iii) All elements of dates (except year) for dates directly related to the individual, including birth date, admission date, discharge date, date of death; all ages over 89; and all elements of dates (including year) indicative of such age. (Exception: Ages and elements may be aggregated into a single category of age 90 or older).

(iv) Telephone numbers;

(v) Fax Numbers;

(vi) E-mail addresses;

(vii) Social Security Numbers;

- (viii) Medical record numbers;
- (ix) Health plan beneficiary numbers;
- (x) Account numbers;
- (xi) Certificate/license numbers;
- (xii) Vehicle identifiers, serial numbers, license plate numbers;
- (xiii) Device identifiers and serial numbers;
- (xiv) Web Universal Resource Locators (URLs);
- (xv) Internet Protocol (IP) address numbers;
- (xvi) Biometric identifiers, including fingerprints and voiceprints;
- (xvii) Full face photographic images and other comparable images; and
- (xviii) All other unique identifying numbers, characteristics, or codes.

(b) Re-Identification

A HCC may assign a code or other means of record identification to allow de-identified information to be re-identified, provided that:

- (i) Derivation. The code or other means of record identification is not derived from or related to information about the individual and is not otherwise capable of being translated so as to identify the individual; and
- (ii) Security. The code and/or mechanism for re-identification are not Used or Disclosed for any other purpose.

## **II. BREACH OF DISCLOSURE OF PHI**

1. NJIT, through its Information Services and Technology Department and HCCs, as applicable, will implement reasonable and appropriate technologies and methodologies designed to secure PHI from unauthorized disclosure. If PHI is rendered unusable, unreadable, or indecipherable to unauthorized individuals, then the PHI is not “unsecured” PHI.

This Policy establishes the requirements regarding the protection of PHI that each HCC must comply with and the notification that must occur in the event of a Breach of PHI.

Refer to NJIT IT Services and Technology Security policies for destruction requirements of electronic PHI.

(a) Notification of Breach

- (i) If a Breach of PHI is suspected or discovered, the NJIT Privacy Official must be notified immediately. The Privacy Official will determine, using the Breach Notification Reporting Process, whether and when a notice to the individual, the media, and/or HHS is appropriate and, if so, the content of the notice. In the event of a Breach of PHI, the NJIT Privacy Official or HCC will also notify the Office of General Counsel, Risk Management and Information Services and Technology Security Officer.
- (ii) In the event a Breach of PHI, NJIT may be required to notify each individual whose PHI has been, or is reasonably believed to have been, inappropriately accessed, acquired, used, or disclosed within 60 days of discovery. The NJIT Privacy Official, Risk Management and Office of General Counsel shall make such notice according to the requirements of HIPAA:
  - (1) Written notices to the individual (or next of kin or personal representative if the individual is deceased) at the last known address of the individual (or next of kin) by first-class mail (or by electronic mail if agreed to by the individual);
  - (2) In cases that the HCC or NJIT Privacy Official deem urgent based on the possibility of imminent misuse of the PHI, notice by telephone or other method is permitted in addition to the above methods.
- (iii) In the event a Breach of PHI involving more than 500 persons, NJIT is required to notify the Department of Health and Human Services as well as prominent media outlets serving the state or jurisdiction. The NJIT Privacy Official, Risk Management and Office of General Counsel shall make such notice according to the requirements of HIPAA.
- (iv) Details of the notice shall include the following:
  - (1) A brief description of what happened, including the date of the Breach and the date of the discovery of the breach, if known;
  - (2) A description of the types of PHI that were involved in the Breach (such as full name, SSN, DOB, home address, account number,

diagnosis, or disability code);

- (3) The steps individuals should take to protect themselves from potential harm resulting from the Breach;
  - (4) A brief description of what NJIT is doing to investigate the Breach, mitigate losses, and protect against any further Breaches; and
  - (5) Contact procedures for individuals to ask questions or learn additional information, which shall generally include a toll-free telephone number, an e-mail address, web site, or postal address.
- (v) If a Breach is caused or discovered by a Business Associate of the NJIT, the NJIT Privacy Official in consultation with OGC shall work with the Business Associate to address the notice requirements, in accordance with the terms of the Business Associate Agreement in place between the parties and HIPAA. The timing and content of any required notice shall be in accordance with applicable law.
- (vi) If a Law Enforcement Official informs NJIT or its Business Associate that a required notice would impede a criminal investigation or threaten national security, the NJIT Privacy Official shall immediately consult with the OGC. Steps will be taken to (1) comply with Law Enforcement's written request for a delay for the time period specified in the statement or (2) document Law Enforcement's verbal request, specifying the time for which the delay is required and the identity of the Law Enforcement Official making the request and delay the notice for up to 30 days, unless a written statement with a longer delay period is provided.

## 2. Tracking

- (a) The Privacy Official must maintain a log of Breaches of unsecure PHI and notify the NJIT Privacy Official and Office of General Counsel of each Breach.
- (b) NJIT, through the NJIT Privacy Official, shall maintain a log of all reported Breaches of PHI and shall submit required reports of such to the Secretary of HHS as required under the HIPAA regulations.

## **JJ. PRIVACY COMPLIANCE AUDIT PROGRAM**

1. The NJIT Privacy Official, in consultation with the Office of General Counsel, will maintain a HIPAA Privacy Audit Program. The Program may include HIPAA

security audit items as well, with the cooperation of the HIPAA Security Officer. Documentation of all audits shall be maintained by the NJIT Privacy Official or Office of Compliance for at least six (6) years.

## 2. Procedure

- (a) The Office of General Counsel shall engage an HIPAA Compliance Auditor, who shall conduct HIPAA compliance audits under the direction of the NJIT Privacy Official and OGC. Audit instruments will be updated as needed by the NJIT Privacy Official and Office of Compliance to address current and ongoing HIPAA issues.
- (b) The HIPAA Privacy Audit Program shall include, at a minimum, the following:
  - (i) In-person audits of each HCC (i.e. student services/athletic department), occurring approximately once every 12 months, or more often if indicated by audit results or HIPAA incidents, and of each HCC or departmental office, occurring once every 24 months, or more often if indicated by audit results or HIPAA incidents.
  - (ii) Self-audits of each HCC using the self-audit instrument.
  - (iii) In-person audits of off-site storage facilities where PHI is stored by a HCC, occurring approximately every 12 months, or more often if indicated by audit results or HIPAA incidents.
  - (iv) Coordination with the NJIT's Internal Audit Department on HIPAA audit issues, items, and findings.
  - (v) Regular audits of the NJIT's Business Associates, either in person or via written compliance certification.
- (c) The HIPAA Compliance Auditor shall submit a copy of the audit reports from each in-person audit to the NJIT Privacy Official within two weeks of conducting the audit. If HIPAA Security issues were identified, the HIPAA Security Officer will also receive a copy.
- (d) The NJIT Privacy Official will provide the Office of General Counsel with a written response to each in-person audit report. The Privacy Official shall notify each HCC in writing of the audit results, including any corrective steps required.
- (e) The HIPAA Compliance Auditor shall review the self-audits and notify the HCC and the NJIT Privacy Official if the audit indicates the need for corrective action or additional training.

- (f) The NJIT Privacy Official and/or Office of General Counsel shall notify the affected HCC if any Business Associate fails to comply with the NJIT's audit, necessitating termination of the Business Associate arrangement and/or reporting to the Secretary of Health and Human Services.
- (g) The NJIT Privacy Official or the Office of Compliance will maintain such documentation for at least six (6 years).

**REVIEW:**

Holly C. Stein 7/23/14.  
 General Counsel Date

[Signature] 7/24/14  
 President Date

**APPROVAL:**

[Signature] 7/23/2014  
 Provost and Senior Executive Vice President Date

[Signature]  
 Senior Vice President for Administration and Treasurer Date

[Signature]  
 Vice President for Human Resources Date

[Signature]  
 Vice President Academic Support and Student Affairs Date