

## Privacy –MODEL Facility Policy

POLICY NAME:      Photographing, Video Monitoring/Recording, Audio Monitoring/Recording, and/or Other Imaging of Patients, Visitors, Workforce Members, Non-employee Dependent Healthcare Professionals, Members of the Medical Staff, and Other Privileged Practitioners

DATE:                    (facility to insert date here)

NUMBER:                (facility to insert number here)

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**Purpose:** To facilitate compliance with the Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information (Privacy Standards), 45 CFR Parts 160 and 164, and any and all other Federal regulations and interpretive guidelines promulgated thereunder. To establish guidelines for situations where protected health information (PHI), patients, visitors, workforce members, non-employee Dependent Healthcare Professionals (DHPs), members of the medical staff, and other privileged practitioners may or may not be photographed, video or audio recorded or monitored or otherwise imaged within the facility.

**Policy:** The facility must take reasonable steps to protect patients, visitors, workforce members, non-employee DHPs, members of the medical staff, and other privileged practitioners from unauthorized photography, video monitoring, and/or audio monitoring/recordings, or other images. Due to the sensitive nature of patient information and to protect patient privacy, the facility must follow the guidelines and procedures outlined below before allowing, or prior to, photographing, video or audio monitoring and/or recording, or otherwise imaging PHI, patients, visitors, workforce members, members of the medical staff, and other privileged practitioners. Facilities must follow security policies, standards, and guidance before using devices, applications, and/or software for photographing, video monitoring, audio monitoring/recording and/or other imaging in order to meet company requirements (*i.e.*, to ensure a specific prohibited technology is not in use). Cloud storage and devices that default to Cloud back-up/storage are prohibited unless specifically reviewed and approved by the corporate Information Privacy and Security program.

States may have separate laws that may apply additional legal requirements. Proactively consult your assigned legal operations counsel to identify and comply with any such additional legal mandates. For purposes of this policy, when authorization or consent is required it may be obtained from the patient or the patient's personal representative, as defined by state law.

Sanctions will be applied in accordance with the facility's Sanctions for Privacy and Information Security Violations policy.

Note: It is recommended that facilities post the facility's policy or signs/posters addressing photography, video monitoring/recording, and/or audio monitoring/recording in various locations in the facility (*e.g.*, waiting rooms).

Refer to the HIPAA Privacy Standards, 45 CFR Parts 160.101 and 164.501 for additional definitions.

### **Definitions:**

**Audio Monitoring** - For the purposes of this policy, “audio monitoring” refers to monitoring an individual’s voice using video cameras, cellular telephones, tape recorders, wearable technology (*e.g.*, Google Glass), or other technologies capable of capturing audio or transmitting sound for monitoring purposes.

**Audio Recording** – For the purposes of this policy, “audio recording” refers to the capture and storage of the individual’s voice or sounds using capable technology (*e.g.*, video cameras, cellular telephones, tape recorders, wearable technology).

**Non-employee Dependent Healthcare Professionals (DHPs)** - Defined pursuant to the Vetting Dependent Healthcare Professionals and Other Non-Employees Policy (CSG.QS.003), these are individuals not employed by the facility who are permitted both by law and by the facility to provide patient care services under an approved scope of practice. These individuals may be employed by a contractor, a temporary staffing agency, a privileged practitioner or practitioner group or be directly contracted by a patient for a specific service. DHPs are a subset of all “staff” providing services at the facility, as defined in the Glossary of the Comprehensive Accreditation Manual for Hospitals, published by TJC. This concept of staff and the related facility responsibilities is consistent with the requirements of the Accreditation Association for Ambulatory Health Care (AAHC) and CMS.

**Photography** - For the purposes of this policy, “photography” refers to recording an individual’s likeness (*e.g.*, image, picture) using photography (*e.g.*, cameras, cellular telephones), video recording (*e.g.*, video cameras, cellular telephones), digital imaging (*e.g.*, digital cameras, web cameras), wearable technology (*e.g.*, Google Glass), or other technologies capable of capturing an image (*e.g.*, Skype, fingerprint or iris scanning technologies). This does not include medical imaging such as MRIs, CTs, laparoscopy equipment, etc. or images of specimens.

**Video Monitoring** – For the purposes of this policy, “video monitoring” refers to monitoring an individual or transmitting PHI or the patient’s likeness using technologies capable of transmitting a video (*e.g.*, video cameras, cellular telephones, web cameras, wearable technology) regardless of whether the transmission is recorded.

**Video Recording** – For the purposes of this policy, “video recording” refers to the capture and storage of the individual’s likeness using video technologies (*e.g.*, video cameras, cellular telephones, web cameras, wearable technology).

### **Procedure:**

This section describes the limited circumstances in which photography, video monitoring and/or audio monitoring/recording may be used to capture, monitor or record PHI, a patient’s likeness or voice. Unless otherwise specified in this policy, workforce members must only use designated company-owned devices to photograph, audio record, or video monitor a patient.

1/1/2018

Members of the medical staff and other privileged practitioners may use personally owned devices if the facility's committee with privacy and/or security oversight (*e.g.*, FECC or FSC) has approved the use of the device for a permissible use; however, the general requirements in this policy still apply. Facilities must have procedures in place to address how company-owned devices will be securely stored and designate appropriate personnel with access to the devices. Photographs and recordings must not be permanently stored on the device (*e.g.*, camera, wearable technology) or on unencrypted memory cards and must be timely deleted (*e.g.*, within 24 hours) from the device or server. Personal devices such as cellular telephones, cameras, wearable technology, etc. must not be used unless otherwise specified in this policy. Facilities must have procedures in place to address how photographs or recordings will be saved, stored, and disposed.

1. Photographing, Video and/or Audio Monitoring/Recording Patients, Workforce Members, Non-employee DHPs, Members of the Medical Staff, or Other Privileged Practitioners by Patients and/or by the Patient's Visitors: The facility is not required to obtain consent from the patient when the patient is the subject of the photography, video monitoring, and/or audio recording and is performed by the patient or the patient's visitors. Consent is not required when a workforce member is asked by the patient to photograph, video record and/or audio record the patient using the patient's or patient's visitor's device. Patients and/or the patient's visitors are not permitted to take photographs of, video monitor, and/or audio record/monitor other patients, workforce members, members of the medical staff, or other privileged practitioners without consent. To the extent the workforce member, member of the medical staff, or other privileged practitioner is aware of any inappropriate attempt to photograph, monitor, and/or record, then reasonable steps must be taken to ensure that patients, workforce members, members of the medical staff, or other privileged practitioners are not photographed, monitored, and/or recorded within the facility by a patient or the patient's family members or visitors.
2. Photographing, Video and/or Audio Monitoring/Recording Patients by Workforce Members, Non-employee DHPs, Members of the Medical Staff, or Other Privileged Practitioners for Treatment, Security, or Health Care Operations Purposes: The Conditions of Admission/Consent for Outpatient Services form (or the equivalent form in non-hospital settings) must contain language advising patients that photographs, video, and/or audio monitoring/recording may be taken for patient care, security or for the purposes of health care operations (*e.g.*, quality improvement or risk management activities). This does not apply to general security surveillance of public areas. When a patient is incapacitated, the facility must follow its normal process for obtaining consent under such circumstances.
3. Photographing Patients by Workforce Members, Non-employee DHPs, Members of the Medical Staff, or Other Privileged Practitioners to Document Abuse or Neglect: Facilities must comply with state regulations that govern abuse and neglect. In general, patient consent is not required; however, the photographs may not be used for any other purpose beyond submission to the investigating agency unless otherwise permitted by federal or state law (*e.g.*, for treatment purposes).

4. Photographing/Audio Recording Patients by Law Enforcement or a Public Health Agency: Facilities must comply with state regulations that govern releasing information to law enforcement or a public health agency. However, in general, facilities may permit law enforcement agencies and public health agencies (e.g., state child protective services) to photograph or audio record a patient if the patient consents and the patient's responsible (e.g., attending) physician agrees the patient is medically stable. Facilities may also disclose photographs and/or audio recordings to law enforcement or a public health agency when required by state law, such as for child abuse and neglect, domestic violence, elder abuse, rape, and similar disclosures required by law.
5. Photographing/Audio Recording Patients by Workforce Members, Non-employee DHPs, Members of the Medical Staff, or Other Privileged Practitioners for Research: Any use and/or disclosure of photographs or audio recording for research purposes will be in compliance with state and federal regulations concerning privacy and research and must pertain only to research formally approved by the facility. If a photograph or audio recording is determined to be identifiable, an Institutional Review Board (IRB) overseeing the specific research project will determine if additional authorizations are required based on the criteria set forth in the privacy laws. The facility information security official (FISO) or Zone FISO may approve the use of devices that are not company issued for research purposes if there is a specific requirement to use the research sponsor's device; however, the general requirements in this policy still apply.
6. Photographing/Audio Recording Patients by Workforce Members, Non-employee DHPs, Members of the Medical Staff, or Other Privileged Practitioners for Publicity Purposes: Facilities **must obtain written authorization** from the patient prior to photographing/audio recording the patient for publicity purposes. The authorization is only good for the type of photographs/recordings indicated and the timeframe listed in the authorization. Otherwise, a new authorization form must be obtained. When the photography/audio recording is for publicity purposes, the facility **must obtain an "Authorization for Use and Disclosure of PHI for Marketing and/or Promotional Purposes" and a separate "Consent for Use and Disclosure of Image, Voice, and/or Written Testimonials."**
7. Photographing/Audio Recording Patients by the Media: Facilities must comply with any state regulations which may apply. However, in general, facilities may permit, but are not required, to permit news media to photograph or audio record a patient if the patient consents and the patient's responsible (e.g., attending) physician agrees the patient is medically stable.
8. Photographing Patients for Disaster Relief Efforts and/or Notification and Location Purposes: In order for facilities to photograph a patient for use in disaster relief efforts and/or notification and location efforts, the facility must follow its "Uses and Disclosures of Protected Health Information for Involvement in the Patient's Care and Notification Purposes" policy and ensure that the patient agrees, the patient was provided the opportunity to object and did not, or it was inferred from the circumstances, based on the exercise of professional judgment that the patient did not object. If the patient is not present, or the opportunity to agree or object to the use or disclosure cannot practicably

be provided because of the patient's incapacity or an emergency circumstance, the workforce member, member of the medical staff, or other privileged practitioner with access to PHI may, in the exercise of professional judgment, determine whether the disclosure of the photograph is in the best interests of the patient.

9. Photographing for Gifts or Commemorative Purposes: In order for facilities to photograph a patient when the photograph will be given as a gift or sold to the patient or patient's family, **written consent must be obtained**. When a vendor is used to provide these services, the **facility must obtain a written authorization** from the patient or the patient must initiate contact with the vendor. For example, the facility may leave a brochure about the services in the patient's room in order for the patient to contact the vendor directly.
10. Photographing, Video Monitoring, and/or Audio Monitoring/Recording Patients for Telemedicine or the Internet (i.e., official uses only): Patient informed consent should be obtained in the manner and to the extent required by state laws and regulations prior to transmitting or using patient photographs/audio recordings for telemedicine or on the internet. The facility must follow its normal process for obtaining any required consent when a patient is incapacitated. This section does not pertain to off-site radiology services performed (e.g., x-rays read offsite). Information Security policies and procedures for encryption and other company requirements must be followed.
11. Photography/Audio Recording of Patients or the Patient's Visitors within the Facility by Workforce Members, Non-employee DHPs, Members of the Medical Staff, or Other Privileged Practitioners for Personal Use: Workforce members, non-employee DHPs, members of the medical Staff, or other privileged practitioners are prohibited from photographing or audio recording patients or the patient's visitors within the facility for their personal use. This includes, but is not limited to, taking pictures to share with friends and/or co-workers, to post on the internet using social media (e.g., Facebook, MySpace, Twitter), etc.
12. Storage: Facilities must refer to the facility model Designated Record Set Policy to determine which photographs and/or audio recordings must be stored in the medical record. Facilities must designate a secure area(s) to store photographs and recordings that contain protected health information and have been determined not to be included in the patient's record. Photographs and recordings must be clearly identified, securely stored and transmitted, and readily accessible for retrieval. State law and the Records Management Policy, EC.014, must be followed for retention of the records.
13. Disclosure: Photographs and audio recordings should not be released without specific written authorization from the patient, unless the disclosure is for treatment, payment or health care operations purposes or is otherwise permitted or required by law. Unless prohibited by law, photographs and audio recordings may be released to the patient in accordance with Patients' Right to Access, IP.PRI.004, when the information is part of the designated record set. Facilities must retain the originals in accordance with state law and the Records Management Policy, EC.014.

**References:**

Health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of Individually Identifiable Health Information 45 CFR Part 164  
American Recovery and Reinvestment Act of 2009, Title XIII, Subtitle D  
Patients' Right to Access, IP.PRI.004  
Authorization for Uses and Disclosures of Protected Health Information, IP.PRI.010  
Records Management Policy, EC.014  
Facility Model Designated Record Set Policy  
Facility Model Sanctions for Privacy and Information Security Violations Policy  
Facility Model Uses and Disclosures for which an Authorization or Opportunity to Agree or Object is Not Required Policy  
Facility Model Uses and Disclosures Required by Law Policy  
Electronic Transmission Standard, COM.E1.01  
Information Access Restriction Standard, AC.AIAC.01  
Information Handling Standard, COM.MH.02  
Data Backup Standard, COM.BU.01  
Equipment Placement and Protection Standard, PES.ES.01  
Environmental Controls Standard, PES.ES.02  
Physical Security Domain Classification Standard, PES.SA.01  
Hjort, Beth, et al. "Patient Photography, Videotaping, and Other Imaging (Updated) (AHIMA Practice Brief)." *Journal of AHIMA* 72, no.6 (2001): 64M-Q