

NUMBER: 2.1.26**DATE: 09/01/2009****REVISION: 12/14/2010; 01/02/2013; 12/05/2016; 02/23/2022****PAGE: 1 of 6****SECTION: HIPAA****AREA: HIPAA PRIVACY/SECURITY POLICIES****SUBJECT: PATIENT PHOTOGRAPHY, AUDIO RECORDINGS, VIDEOGRAPHY, AND OTHER IMAGING****PURPOSE**

To establish guidelines for taking pictures of UAMS patients, the Use of patient photographs, and to outline the safeguards to be enacted to protect the privacy and security of patient photographs.

SCOPE

The UAMS Workforce.

DEFINITIONS

Disclosure means the release, transfer, provision of access to, or divulging of information in any manner, verbally, electronically, or in writing, by UAMS to anyone outside of the covered components of the UAMS hybrid entity.

Legal Representative means the person authorized by law to act on behalf of the patient, such as the parent of a minor, a court-appointed guardian or a person appointed by the patient in a Power of Attorney document.

Protected Health Information (“PHI”) means information that is part of an individual’s health information that identifies the individual or there is a reasonable basis to believe the information could be used to identify the individual, including demographic information, and that (i) relates to the past, present or future physical or mental health or condition of the individual; (ii) relates to the provision of health care services to the individual; or (iii) relates to the past, present, or future payment for the provision of health care services to an individual. This includes PHI which is recorded or transmitted in any form or medium (verbally, or in writing, or electronically). PHI excludes health information maintained in educational records covered by the federal Family Educational Rights Privacy Act and health information about UAMS employees maintained by UAMS in its role as an employer and health information regarding a person who has been deceased for more than 50 years.

Photography means, for purposes of this policy, a recording of a patient’s likeness, even if the patient’s face is not included, by a number of visual means, including but not limited to, still photography, audio media, videography, including but not limited to, videography captured and viewable in real time and videography accessible and viewable from remote locations different than where the videography takes place, digital imaging, and scans. Photography does not mean radiological images such as X-rays and MRI.

Use means the sharing, employment, application, utilization, examination, or analysis *within* UAMS.

UAMS Workforce means for purposes of this policy, physicians, employees, volunteers, trainees, and other persons whose conduct, in the performance of work for UAMS, is under the direct control of UAMS, whether or not they are paid by UAMS.

Go to the UAMS HIPAA Office website at hipaa.uams.edu to access any other terms or definitions referenced in this policy.

POLICY

UAMS utilizes a variety of media to collect Protected Health Information on patients and will hold all such information to the same standard of confidentiality and security as required for all PHI according to UAMS policies. Patient consent will be obtained as outlined in this policy. Photography, videography, and other images and recordings may be taken only for purposes permitted by this policy.

PROCEDURE

A. Taking Photographs and Other Images

Taking photos and other images must be related to your job duties. The photograph, image, or other recording should be taken in a secure manner and date and time stamped when possible. If you Use your cell phone to take photos, you must Use Haiku, Rover, Canto, or other secure Epic applications. These Epic applications prohibit retaining photos on the phone and ensure they are only retained in the Epic medical record.

B. Patient Consent

- 1. For Treatment Purposes Only** – The patient, or the patient’s Legal Representative, should be asked to provide consent for UAMS to photograph, record video and audio, or create other images of the patient for treatment purposes. Verbal or written consent for treatment purposes should be obtained at the time of initial treatment at the facility of care or when Photography begins. A consent form that is signed by the patient may be used to obtain the patient’s written consent. This consent form can be combined with other consent forms, such as a general consent to treat form, or can be a separate form, such as the *Consent to Take Photography* form (Med_Rec 1442 available on UAMS Forms OnDemand). The patient’s written consent to take and Use Photography for treatment purposes may also address additional purposes as long as such consent form for additional purposes complies with the requirements of this policy. For treatment purposes only, verbal consent may be obtained in place of the written consent of the patient or the patient’s Legal Representative, and should be documented in a note pertaining to the encounter.

2. Patient Written Consent Required for Payment or Health Care Operations –

- a. To take and Use Photography or other images for payment purposes or health care operations, the patient or the patient’s Legal Representative will be asked to provide written consent at the time of initial treatment or when Photography begins.
- b. This consent form can be combined in other consent forms or can be a separate form, such as the *Consent to Take Photography* form (Med Rec 1442 available on UAMS Forms OnDemand). A copy of the signed consent form should be provided to the patient or patient’s Legal Representative.
- c. This consent form limits the Use of such Photography for purposes related to payment or health care operations, such as quality improvement purposes within UAMS or educational purposes within UAMS. Refer to UAMS Administrative Guide Policy 2.1.13, *Use and Disclosure of PHI and Medical Records Policy*, for a definition of Health Care Operations.

3. For All Other Purposes - Written Consent with Valid HIPAA Authorization for Release of Information Required -

UAMS will obtain additional patient consent to take photographs for any purpose outside unrelated to treatment, payment, and health care operations as described above. For Use and/or Disclosure of photographs for these additional purposes not related to treatment, payment or health care operations, this consent to photograph must include the elements of a valid HIPAA Authorization. The consent may be combined with a HIPAA authorization or the HIPAA authorization may be a separate form. The UAMS forms that contain the elements of a valid HIPAA authorization are Med Rec 2551 and Med Rec 99FR available on UAMS Forms OnDemand. Uses and Disclosures of this nature may include photographs, videotapes, audio recordings, digital video disks, or other images for Internet use or publication. A copy of the signed authorization form should be provided to the patient or patient’s Legal Representative.

4. Maintaining Consent and Authorization Forms – Copies of the patient consent and authorization form shall be retained in the patient’s electronic health record. The form should be scanned and available under the Media section of the electronic health record with other consent and authorization forms. Consent and authorization forms can be sent to Health Information Management (“HIM”) and HIM will scan them into the electronic health record.

5. Exceptions

- a. **Photographs Taken for Identification Purposes** – Patient photographs taken for identification purposes only during the registration process or for the electronic health record do not require written consent. However, verbal consent should be obtained, and the patient may decline to have their photograph taken.
- b. **Documentation of Abuse and Neglect** - UAMS is not required to obtain patient consent or the consent of the patient’s Legal Representative when using Photography to document reportable cases of actual or suspected abuse and neglect. These images

may be disclosed to investigating agencies as required by law and outlined in UAMS Administrative Guide Policy 2.1.13, *Use and Disclosure of PHI and Medical Records Policy*.

- c. **Patient Unable to Consent** – If the Photography is for purposes related to payment or health care operations, such as education, training, and quality improvement, the written consent of the patient or the patient’s Legal Representative is not required if the patient is unable to consent.
 - d. **De-identified Images** - UAMS may determine that images are not individually identifiable health information if identifiers of the patient, the patient’s relatives, the patient’s household members, and employer are removed. If UAMS believes the images cannot be Used to identify the patient, the images may be Used outside of UAMS for official UAMS business purposes without patient authorization in accordance with UAMS Administrative Guide Policy 2.1.16, *De-Identification of Protected Health Information and Limited Data Set Information*.
 - e. **Family/Personal Use** – When a patient or the friends and family involved in a patient’s care request UAMS staff to take photographs solely for personal Use (such as for family photo albums or a baby book), UAMS is not required to obtain written patient consent prior to taking the photograph.
 - f. **General Recording or Filming of Premises for Security Purposes** - In order to provide for the safety and security of patients, employees and visitors, UAMS may utilize cameras to monitor the premises, and patient consent is not is not required for these recordings.
- C. Security and Storage of Photographs, Recordings and Images** - All patient photographs, videos, and other recordings and images will be stored in a secure manner that protects the patient’s privacy. These images will be stored for the retention period required by law or as defined by UAMS policy, generally for the same retention period as the patient’s health record and in compliance with policies governing other PHI. Images may not be retained on digital cameras, cellular phones, storage cards, or other recording devices. Services and solutions Used to store and transmit electronic PHI must be approved and authorized by UAMS. Box and OneDrive are approved and authorized UAMS services that may be Used to store or transmit electronic PHI.
- D. Maintaining Photographs, Images and Other Recordings in the Electronic Health Record** – Photographs, images, and other recordings may be included in the electronic health record. The decision to make such images part of the medical record is left to the clinical judgment of the provider. In order to be considered part of the patient’s medical record, such images must be stored in the EHR or the UAMS electronic image repository. UAMS departments using Photography, video, or audio records may have departmental procedures that comply with this policy and other relevant UAMS policies defining when such images are to be considered part of the patient’s medical record.

E. Documentation in the Electronic Health Record

- 1. Verbal Consent** - The nurse, physician, or other provider should document the patient's verbal consent in a note pertaining to the encounter. When the Photography is for treatment purposes only, verbal consent may be obtained in place of written consent of the patient or the patient's Legal Representative.
- 2. Use of the Photograph or Image for Treatment** – The Use of Photography, images, or other recordings as part of the patient's treatment should be documented in the patient's health record.
- 3. Sensitive Photographs and Images** - Certain clinical Photography and other images necessary for safe and effective clinical care and treatment may be sensitive in nature. In such circumstances, a brief reference to the Photography or image should be included in clinical documentation and the Photography or other image should be stored in a separate portion of the EHR. Photography sensitive in nature should not be directly imbedded, pasted, or otherwise visible within the body of documentation related to clinical care, such as a progress note, a procedure note, and a history and physical. For example, a procedure note could include the reference "see photographs of operative site" along with an explanation included in the procedure note as to where in the medical record the photographs are stored.

F. Patient Copies of Photographs and Images - The patient is entitled to copies of photographs and images. UAMS may charge a reasonable fee to cover the cost of copying or duplicating the photographs and/or images. *See UAMS Administrative Guide Policy 2.1.13, Use and Disclosure of PHI and Medical Records Policy.*

G. Revocation – A patient may revoke or withdraw the consent and/or authorization at any time by giving written notice to the UAMS HIPAA Office, Slot #829, 4301 W. Markham ST, Little Rock, AR 72205. A withdrawal of the consent will not apply to photographs, audio, and visual recordings or other images Used or disclosed prior to the written notices of withdrawal. During the recording or filming, the patient has the right to stop the recording or filming at any time.

H. Research - Photography taken as part of a research study must be approved by the Institutional Review Board. Consent for such images must be incorporated into the informed consent form for participation in the research study or a separate consent form.

I. Presentations and Publications – To Use photographs that identify a patient in manuscripts, presentations at conferences, professional organizations external to UAMS, or any other public forum, a written authorization must be obtained from the patient prior to using the photographs.

J. Marketing – A written authorization must be obtained from the patient prior to photographing the patient for marketing purposes, as outlined in UAMS Administrative Guide Policy 2.1.21, *Use of PHI for Marketing.*

K. Non-UAMS Photographers – An individual who is not a member of the UAMS Workforce must be authorized and approved by UAMS to take photographs, videos, and other images and recordings of patients. The individual may be required to sign a Confidentiality Agreement or a Business Associate Agreement must be in place as required under HIPAA. For questions about a Confidentiality Agreement or Business Associate Agreement, contact the UAMS HIPAA Office at 501-603-1379 or email HIPAA@uams.edu.

SANCTIONS

Violation of this Policy will result in disciplinary action in accordance with UAMS Administrative Guide Policy 4.4.02, *Employee Discipline*, UAMS Administrative Guide Policy 2.1.42, *HIPAA Sanctions Policy*, and other applicable UAMS policies or procedures.

Signature: _____

A handwritten signature in black ink, appearing to read "C. Smith", is written over a light blue rectangular background. The signature is cursive and somewhat stylized.

Date: February 23, 2022