



## COHESIVE HEALTHCARE MANAGEMENT & CONSULTING

### MANGUM REGIONAL MEDICAL CENTER

| TITLE   |                  | POLICY                          |
|---|------------------|---------------------------------|
| <b>Videotaping, Audiotaping and Still Photography</b> |                  | <b>HIM-041</b>                  |
| MANUAL  | EFFECTIVE DATE   | REVIEW DATE                     |
| <b>Health Information Management</b>                  | <b>8/2017</b>    | <b>5/18, 11/18, 1/20, 12/20</b> |
| DEPARTMENT  | REFERENCE        |                                 |
| <b>Health Information Management</b>                  | <b>See below</b> |                                 |

## PURPOSE

This policy applies to all patients, visitors, workforce members, and medical staff members of Mangum Regional Medical Center that may be the subject of photography and/or multimedia activities performed by the Hospital and its employees.

Hospital is committed to ensuring compliance with the Health Insurance Portability and Accountability Act (“HIPAA”) Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”), 45 CFR Parts 160 and 164 and any other Federal or State regulations and guidelines. To establish guidelines for the photography and multimedia imaging of patients, visitors, workforce and medical staff members to ensure their privacy and protected health information as applicable is protected whenever photography and/or multimedia activities are performed by the Hospital and its employees. For the purposes of this policy, photography is referred to in a broad sense including, but not limited to: photographs, videotaping, recording, audio/visual, or other imaging mediums, and including other such mediums that may be developed in the future.

## DEFINITIONS

**Audio Monitoring-** For the purposes of this policy, “audio monitoring” refers to monitoring an individual’s voice using video cameras, cellular phones, tape recorders, wearable technology, 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 camera, cellular telephones, tape recorders, wearable technology).

**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 phones), video recordings (e.g., video cameras, cellular phones), digital imaging (e.g., digital cameras, web cameras), wearable technology, or other technologies capable of capturing an image (e.g., Skype). This does not include medical imaging i.e., MRIs, CTs, images of specimens, etc. Not

all patient photos contain protected health information (“PHI”) but are identified as health information. A patient photo is considered to contain PHI if it has any of the following patient identifiers:

- Any portion of the face;
- Unique identifying marks (e.g., tattoos, birthmarks)
- Name or Initials;
- Birth Date;
- Social Security Number;
- Address;
- Date of Service;
- Medical Record Number.

**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 phones, 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 phones, web cameras, wearable technology).

## **POLICY**

The Hospital shall take reasonable steps to protect patients, visitors, workforce members, and medical staff members from unauthorized photography as defined in the broadest sense of this policy (photographs, videotaping, recording, audio/visual, or other imaging mediums, and including other such mediums that may be developed in the future). The Hospital shall follow the guidelines and procedures outlined in this policy before allowing, or prior to photographing or other such related activities of patients, visitors, workforce and medical staff members to protect patient and workforce member information and privacy. The Hospital shall follow device standards and guidance before using devices, applications, and/or software for photographs and multimedia in order to adhere to the Hospital’s security and privacy requirements.

## **PROCEDURE**

- A. Devices used for the purpose of obtaining images of patients, visitors, workforce and medical staff members must be company-owned and company-approved for use by the Hospital. In the event a device does not meet this criteria, approval by the Hospital Administrator to use the device must be obtained prior to use.
- B. All devices will be securely stored and accessed only by designated personnel with authority or the responsibility for using the devices.
- C. Consent for Photography/Multimedia and Authorization for Use or Disclosure (See Attachment A) shall be obtained from the patient or workforce and medical

staff member prior to obtaining the image or recording. Patient consents will be maintained in the patient's medical record. Employee consents will be maintained in the workforce member's personnel file.

- D. Photographs and recordings will not be permanently stored on the device (e.g., camera, wearable technology), or on unencrypted memory cards and must be transferred or stored to a permanent location (e.g., patient's medical record) in a timely manner and deleted from the device.
- E. The Hospital is not required to obtain consent from the patient under the following situations:
  - 1. When the patient is the subject of the photography and is performed by the patient or patient's visitors.
  - 2. When a workforce member is asked by the patient to photograph the patient using the patient's or patient's visitor device.
- F. Patient's and/or the patient's visitors are not permitted to take photographs of other patients, workforce and medical staff members without consent.
- G. The Hospital may permit law enforcement agencies and applicable public health agencies (e.g., child protective services) to photograph or record a patient if the patient consents and the patient's medical provider agrees the patient is medically stable.
- H. The Hospital may disclose photographs and/or audio recordings to law enforcement agencies or applicable public health agencies (e.g., child protective services) when required by state law, such as for child abuse and neglect, domestic abuse, elder abuse, and similar disclosures required by law.
- I. Clinical photography (e.g., wounds) is considered a routine practice of the care and treatment of patients and is covered within the general admission consent to treat.
- J. The patient or patient representative has the right to refuse photography/audio recordings.
- K. The patient or patient representative has the right to withdraw consent at any time by contacting any one of the following: Hospital Administrator, Quality Manager, Charge Nurse, or Compliance Officer.
- L. The Hospital must obtain written consent and authorization from the patient or workforce member prior to photographing/audio recording the patient or workforce member for publicity purposes, receipt of gifts, or commemorative purposes using the Consent for Photography/Multimedia and Authorization for Use or Disclosure (See Attachment A). 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.
- M. Patients should be provided with the knowledge of what is being shared and with whom it is being shared.
- N. The Hospital is not required, but may permit news media to photograph or record a patient if the patient consents and the patient's medical provider agrees the patient is medically stable.
- O. In the event of an emergency or disaster the Hospital must ensure the patient agrees to the photograph/recording and was provided with 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.
- P. In the event of an emergency or disaster, 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 or medical staff member with access to PHI may, in the exercise of professional judgment, determine whether the disclosure of the photograph is in the best interest of the patient.
- Q. Workforce and medical staff members are strictly prohibited from photographing/audio recording patients or patient's visitors within the Hospital 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, Twitter, etc.).
- R. Signage should be posted in conspicuous patient areas to support this policy and should read: "Patient and staff permission required before photos are taken or recordings are made."
- S. Storage
1. Photographs/audio recordings related to the care and treatment of the patient will be stored in the patient's medical record.
  2. Photographs and recordings that contain protected health information (PHI) and determined not to be included in the patient's medical record will be stored in the Medical Records Department.
  3. All photographs and recordings must be clearly identified (patient name, medical record number, account number, and date of admission), securely stored, and readily accessible for retrieval.
- T. Disclosures
1. Photographs/audio recordings will not be released without specific written authorization from the patient or workforce and medical staff member, unless the disclosure is for treatment, payment, or health care operations.

2. Unless prohibited by law, photographs/audio recordings may be released to the patient in accordance with the patient's right of access to their medical record. The Hospital will retain the originals.
- U. Workforce and Medical Staff Members
1. Written consent and/or authorization for photographs/audio recordings must be obtained prior to the performance of the following activities, but not limited to:
    - a. Dissemination to Hospital staff (medical providers, health professionals);
    - b. Emergency/Disaster Notification;
    - c. Educational;
    - d. Research;
    - e. Scientific;
    - f. Public Relations;
    - g. Marketing;
    - h. News Media;
    - i. Charitable Purposes;
    - j. Law Enforcement;
    - k. Legal
  2. It is the policy of this Hospital that any photographs/audio recordings of workforce members that occur in conjunction with an organized meeting (e.g., Zoom, Teams, tape recorders) are to be used strictly for work and historical purposes and are not to be shared with others not privileged to such information and deleted once the information is transcribed into a permanent format. Workforce member consent is not required for these purposes.
  3. In the event any workforce members use personal devices that have a camera and/or audio/video recording any interaction with any workforce members on Hospital property, such photographs or video recordings shall not be publicly shared, such as on the internet, social media or in public viewings. Workforce members shall immediately notify Hospital Administrator of such photographs or audio/video recordings.
  4. Hospital shall obtain written consent from workforce members prior to using photograph or audio/video recording related to Hospital event functions on publicly shared media, such as on the internet, social media or in public viewings.
  5. Consent is not required from workforce member for Hospital to use photograph or audio/video recording related to Hospital event functions on privately shared media, such as the Hospital intranet or newsletter.
- V. Accountability
1. Failure to follow this policy may result in corrective action up to and including termination.
  2. Staff are encouraged to report any HIPAA violations to the Hospital Compliance Officer without fear of retaliation.

3. The Hospital will provide education and training to the workforce members on hire, annually, and as needed.

## ATTACHMENTS

Attachment A - Consent for Photography/Multimedia and Authorization for Use or Disclosure (HIM-041A)

## REFERENCES

HIPAA Social Media Rules Retrieved from March 2018 HIPAA Journal

<https://www.hipaajournal.com/hipaa-social-media/#:~:text=HIPAA%20and%20Social%20Media&text=The%20HIPAA%20Privacy%20Rule%20prohibits,in%20a%20patient%20being%20identified.>

## REVISIONS/UPDATES

| Date     | Brief Description of Revision/Change   |
|----------|--|
| 11/26/18 | Change in Header, Font and Policy Number   |
| 1/20/20  | No Updates   |
| 12/1/20  | Change in Header. Change verbiage. Add References section. Add Attachments section. Move policy from HIPAA Manual to HIM Manual. Change policy number from HIP-056 to HIM-041. |