

 <p>Henry Ford Health System Tier 1 Includes: Behavioral Health Services Community Care Services Corporate Services Henry Ford Hospital HF Kingswood Hospital HF Macomb Hospitals HF Medical Group HF West Bloomfield Hospital HF Wyandotte Hospital</p>	Policy Name/Subject: Tier 1 Non – Behavioral Health Services Patient Photographs and Audio/Video Recordings		Policy No: 318.00
	Type of Document: Policy Procedure Form <input type="checkbox"/> Guidelines <input type="checkbox"/> Protocol <input type="checkbox"/> Other:		
	Applies to: Tier 1 (All HFHS) <input type="checkbox"/> Tier 2 <input type="checkbox"/> Tier 3		
	Category: Patient Rights /Ethics		Current Approval Date: 8/24/15 Last Revision Date: 5/21/15
	Owner: Director, Health Information Management		Approver: Multidisciplinary Provider System Council
	Related Policy/Procedure: Tier 2 Behavioral Health - Fingerprinting, Photographs, or Audiotape/Security Cameras Policy RR #4		
	Author: Jane Schelberg, Senior Counsel, Corporate Legal Affairs		
	External Regulatory Requirement: CMS Patient Rights, TJC Patient Rights		
	Audience: All HFHS Employees		
	Key Words: photo, picture, image, identification		

1.0 **Background:** It is the intent of Henry Ford Health System (HFHS) to protect the privacy of all patients. In doing so, any photograph and audio/video recording taken of HFHS patients will comply with privacy laws and HFHS policy.

2.0 **Policy:** Henry Ford Health System will comply with all applicable laws, regulations and accreditation requirements concerning photographs and audio/video recordings including HFHS confidentiality policies (HFHS System Privacy – HIPAA – Policies H-001 – H023.) The Michigan and Federal Mental Health Codes will govern photographs and audio/video recordings of patients receiving Behavioral Health Services.

3.0 **Procedure**

3.1 **PATIENT PHOTOGRAPHS, AUDIO/VIDEO RECORDINGS TAKEN FOR CLINICAL CARE**

Patient photographs and audio/video recordings that are taken as part of the patient’s clinical care are considered part of the patient medical record and may be taken in accordance with this Policy WITHOUT WRITTEN AUTHORIZATION FROM THE PATIENT. Patient photographs and audio/video recordings may be taken for various reasons including: as part of the actual test (e.g. sleep study, x-ray), to enhance documentation for assessment and response to treatment or to provide the health care team with a more complete assessment for treatment recommendations.

HFHS staff who take patient photographs or audio/video recordings for clinical care must be trained on appropriate device quality, including appropriate storage. Whenever possible, the patient should be unidentifiable. The patient’s face and identifying marks (e.g. unique tattoo) should only be included if it is relevant to the purpose of the photograph or recording. If a patient’s face is relevant, the photograph or recording should redact (e.g. blacken out) non-relevant portions of the patient’s face (e.g. eyes, nose, mouth etc.).

- 3.1.1 Only HFHS approved assets (e.g. iPhones, iPods) and applications (e.g. Haiku, Canto) that can capture and securely attach the photograph or recording to the electronic health record (EHR, e.g. EPIC, ePACS), will be used to take patient photographs and audio/video recordings for clinical care.
- 3.1.2 Patient photographs or recordings taken for clinical care must be dated and timed and include the patient’s name and MRN.

- 3.1.3 Photographs and recordings will be immediately deleted from cameras or phones as soon as they are saved to the patient's EHR or another HFHS password-protected asset.
- 3.1.4 No photograph or audio/video recording may be kept on an unapproved site
- 3.1.5 Staff may not download or store patient photographs or audio/video files on their personal electronic devices such as a laptop, cellphone or tablet.
- 3.1.6 Patient photographs and audio/video recordings cannot be posted to the internet and/or social media feeds such as Facebook, Instagram, Twitter, etc.
- 3.1.7 Requests to release photographs or recordings (to patients, healthcare providers or others) will follow HFHS Release of Information policies (See HFHS Policy # H-014 "Use and Disclosure of Patient Information with Authorization; Patient Right to Access").

3.2 PATIENT PHOTOGRAPHS TAKEN TO ASSIST WITH THE PROCESS OF IDENTIFICATION VERIFICATION.

Patient photographs uploaded as part of the demographic section of the EHR must be compared prior to upload to a state ID or driver's license that has already been uploaded to the EHR as an initial identification verification step. Patient consent is given by allowing the photo to be taken and written authorization is not required. The photo from a patient's driver's license may be uploaded to the demographic section of the EHR without written authorization from the patient.

3.3 PATIENT PHOTOGRAPHS TAKEN TO PROVIDE DOCUMENTATION OF SUSPECTED ABUSE OR NEGLECT.

Patient photographs and audio/video recordings may be taken accordance with the "Victims of Abuse" policy. (See HFHS Policy #650 "Victims of Abuse").

3.4 PATIENT PHOTOGRAPHS TAKEN FOR LAW ENFORCEMENT ISSUES.

HFHS Security may take patient photographs and recordings for security purposes and surveillance in accordance with applicable Security Policy. Security photos or audio/video recordings may be released to police or other investigative agencies for the purpose of police investigation or crime awareness reporting. Patient medical record photographs and audio/video recordings will only be released through Subpoena request.

3.5 PATIENT PHOTOGRAPHS TAKEN OF NEONATES.

HFHS staff may take photographs of neonates when given to the family and not retained by HFHS. This may include mementos at the time of loss.

3.6 PATIENT PHOTOGRAPHS AND AUDIO/VIDEO RECORDINGS USED FOR EDUCATION AND QUALITY IMPROVEMENT.

Patient photographs and/or audio/video recordings used for education or quality assurance purposes shall comply with sections 3.1.1 – 3.1.7 above. Patient photographs or recordings that DO NOT reveal the patient's identity may be used for internal educational purposes, including HFHS staff education and/or quality assurance/peer review processes, and external education (journals, publications, presentations) without written authorization. (See Appendix A: Requirements for Authorization/Consent).

- 3.6.1 Patient photographs and audio/video recordings in which the patient is identifiable (whether due to facial features, identifying mark such as a unique tattoo, a unique medical condition or otherwise) may not be used for internal educational purposes, including HFHS staff education and/or quality assurance/peer review processes, or external education without written authorization from the patient or legal representative.
- 3.6.2 If a patient or legal representative has signed the "General Consent Form" or a "Consent to Medical, Surgical or Diagnostic Procedures" (Informed Consent) form, they have given written authorization to use the photograph or recording

for internal education including HFHS staff education and/or quality review processes.

3.6.3 If the patient has not signed the General Consent Form or Informed Consent form, written authorization must be obtained if the photograph or recording will be used for internal education including quality improvement (See Appendix B: Authorization To Use Photograph Or Audio/Video Recording).

3.6.4 Written authorization must be obtained before using the photograph or recording for external education (See Appendix B: Authorization to Use Photograph or Audio/Video Recording).

3.7 PATIENT PHOTOGRAPHS AND AUDIO/VIDEO RECORDINGS FOR RESEARCH

The use of patient photographs or recordings for HFHS sponsored research will follow HFHS INSTITUTIONAL REVIEW BOARD (IRB) RULES FOR PATIENT CONSENT.

3.8 PATIENT PHOTOGRAPHS AND AUDIO/VIDEO RECORDINGS USED FOR PUBLIC RELATIONS/MARKETING.

HFHS may request patients' participation in public relations or marketing activities, including discussing the patient's medical story, providing a testimonial and/or being photographed or videotaped. With the patient's written authorization, this information and/or photograph or video/audio recordings may be used in the following ways:

- § Education (e.g., HFHS Diabetic Education guide, etc.)
- § News media (e.g., newspapers, radio, television, online media, etc.)
- § Henry Ford publications (e.g., HFHS Monitor, etc.)
- § Henry Ford marketing and/or advertising (e.g., Billboards, brochures, etc.)
- § Henry Ford Internet web and/or social media sites (e.g., Facebook, Twitter, etc.)

Use of patient photographs or audio/ video recordings for any of these reasons will be permitted only if the patient or the patient's legal representative signs an "Authorization for Public Relations / Marketing Purposes" (Appendix B). Signed Authorizations will be maintained by the HFHS Information Privacy and Security Office (IPSO). Photographs and audio/video recordings taken by HFHS Public Relations/Marketing at any public venue do not require authorization if the photograph or recording does not identify the person in any way as an HFHS patient (e.g. no protected health information used, nor terms such as "cancer survivor", "transplant recipient" etc.). However, patient authorization is required if HFHS subsequently desires to use any such photographs or recordings for marketing or PR purposes.

3.9 PATIENT PHOTOGRAPHS OR AUDIO/VIDEO RECORDINGS TAKEN BY PATIENT/FAMILY/FRIENDS

Patient photographs or audio/video recordings taken by the patient, patient's family, friends or agents do not require a written authorization, but may only be taken under the following conditions:

- § The patient is not undergoing emergency medical treatment.
- § No other patient is included in the photograph or recording without written authorization.
- § No HFHS employee is included in the photograph or recording without verbal authorization.
- § No HFHS logo or patient care equipment is included in the photograph or recording.
- § Patient care and hospital operations are not disrupted.
- § Audio recording of the patient may be made using voice-over-internet protocol (e.g. Skype) only if it is not done during treatment and does not include HFHS staff recordings.

HFHS Security or other staff member may prevent or stop the taking of patient photographs or audio/video recordings if this policy or any other HFHS policy is violated.

3.10 PATIENT PHOTOGRAPHS AND AUDIO/VIDEO RECORDINGS IN DELIVERY ROOM

Photographs and audio/video recordings may be taken of the patient in the delivery room, but will not be permitted to include the delivery itself. In special circumstances audio/video of the patient may be made using voice-over internet protocol (e.g. Skype). The taking of photographs and audio/video recordings (including Skype) may be discontinued at the discretion of the attending physician/resident or hospital personnel.

3.11 PATIENT PHOTOGRAPHS AND AUDIO/VIDEO RECORDINGS OF INCAPACITATED PATIENTS

Photographs and audio/video recordings of patients who are incapacitated will not be taken by friends or family unless approved by the patient’s legal representative.

3.12 PATIENT PHOTOGRAPHS TAKEN IN CONNECTION WITH CONTRACTOR.

If an HFHS Hospital has a contract with an independent contractor to be available for newborn photographs, the contractor is responsible for obtaining written authorization if required. The contract between the Hospital and contractor may include rules for how, when and where photographs will be taken.

4.0 Reference(s)/Source(s)

- 4.1 CMS Hospital Conditions of Participation, Patient Rights 42 CFR Section 482.13 (c)(1)
- 4.2 Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule Public Law 104-191 104th Congress
- 4.3 HFHS Cellular Phones and Communication Devices (HR Policy #5.27)
- 4.4 HFHS Legal Medical Record, HFHS Policy # EHR004
- 4.5 HFHS Retention of Medical Records, HFHS Policy #11
- 4.6 HFHS RL: Risk - Reporting of Safety Events Policy # 900.50
- 4.7 HFHS System Privacy – HIPAA – Policies H-001 – H023).
- 4.8 HFHS Use and Disclosure of Patient Information with Authorization: Patient Right to Access (HFHS Policy #H014)
- 4.9 HFHS Use of Electronic Mail to Communicate Patient Information (HFHS Corporate Policy #H022)
- 4.10 HFHS Victims of Abuse Policy (HFHS Policy #650)
- 4.11 Recipient Rights – Fingerprinting, Photographs, Audiotape, or use of 1-way glass. Recipient Rights Policy RR4, Behavioral Health Services.
- 4.12 Rights and Responsibilities of the Individual, Standard RI01.03.03. The Joint Commission, Hospital Accreditation Program Standards & Elements of Performance (EPs), 2014

APPENDIX A: REQUIREMENTS FOR AUTHORIZATION / CONSENT

Patient Identifiable	Pictures Used for Internal Education / Quality Improvement	Pictures Used for External Education	Any Pictures for PR / Marketing Use
No	No written authorization or consent needed	No written authorization or consent needed	Authorization needed: <ul style="list-style-type: none"> • Authorization to Use Photo/Video
Yes	Authorization needed: <ul style="list-style-type: none"> • General Consent <u>or</u> • Informed Consent <u>or</u> • Authorization to Use Photo/Video 	Authorization needed: <ul style="list-style-type: none"> • Authorization to Use Photo/Video 	Authorization needed: <ul style="list-style-type: none"> • Authorization to Use Photo/Video

APPENDIX B: AUTHORIZATION TO USE PHOTOGRAPH OR AUDIO/VIDEO RECORDING



Epic Patient Label Here

Name _____ **Patient** **Yes** **No**
First Middle Initial Last

Address _____
Street City State Zip

Phone _____ **Email** _____

Signature _____ **Date** _____
(Patient / Personal Representative / Parent or Legal Guardian*)

** For minors 17 and under, a parent or legal guardian's signature is required.*

I give permission to Henry Ford Health System (HFHS) to tell my patient story, and/or to take my photograph and/or to be videotaped and/or have my voice recorded for these Public Relations or Marketing purposes.

- News media (e.g., newspapers, radio, TV, online media, etc.)
- Henry Ford newsletters (e.g., HFHS Morning Post, Monitor, etc.)
- Henry Ford marketing and/or advertising (e.g., billboard, brochure, radio/TV commercials, etc.).
- Henry Ford patient and/or medical training (e.g., HFHS diabetic teaching guide, etc.)
- Henry Ford Internet and/or social media sites (e.g. HenryFord.com, Facebook, Twitter, YouTube)

Assignment/Project: _____

PR/Marketing Representative: _____

I give permission to HFHS to use my photograph and/or video/audio recording for internal education, including quality improvement

Department Representative: _____

I give permission to HFHS to use my photograph and/or video/audio recording for external education

Department Representative: _____

I will not be paid by HFHS for use of my photograph or video/audio recording for any purpose. Signing this form will not affect my medical care. This signed form will be scanned to my electronic health record or sent to the HFHS Privacy and Security Office to be kept on file. If I change my mind about my patient story and/or my photograph, videotaping or audio recording, I must tell HFHS in writing at PrivacySecurity@hfhs.org. I know that even if I change my mind, HFHS cannot undo use of my patient story and/or photograph, videotaping, audio recording that already occurred.

**If authorization is for quality improvement, or internal or external education, scan signed form to EPIC
If authorization is for PR /Marketing purposes, send signed form to IPSO at 1 Ford Place**

For IPSO Use Only

Received By _____ **Date Received** _____ **Date Revoked** _____

Comments _____

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